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नई दिल्ली, शनिवार, सितम्बर 16, 2000/भाद्र 25, 1922

No. 22]

NEW DELHI, SATURDAY, SEPTEMBER 16, 2000/BHADRA 25, 1922

इस भाग में बिना पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

नई दिल्ली, 18 अगस्त, 2000

New Delhi, the 18th August, 2000

आ.अ. 137.—भारत निर्वाचन आयोग गडनिस
भवानी शंकर बनाम फालैरो इडुयारडो मार्टिनहो निर्वाचन
संख्या 2/99 में तारीख 3-3-2000 के पणजी स्थित
बम्बई उच्च न्यायालय के आदेश को लोक प्रतिनिधित्व
अधिनियम, 1951 (1951 का 43) की धारा 106
के अनुसरण में इसके द्वारा प्रकाशित करता है।

O.N. 137.—In pursuance of Section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951), the Election Com-
mission of India hereby publishes the order of the High Court
of Bombay at Panaji Bench dated 3-3-2000 in Election
Petition No. 2 of 1999 (Gadnis Bhawani Shankar Vs.
Faleiro Eduardo Martinho).

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

IN THE COURT OF BOMBAY AT GOA

Application No. 2 of 1999 in Election Petition No. 2 of 1999

Faleiro Eduardo Martinho.

resident of 696.

Raja, Saleete, Goa

—Applicant/Original Respondent
No. 1.

Versus

Gadnis Bhawani Shankar,
resident of Uma Niwas,
Comba, Margao, Goa—Opponent/Original
Petitioner.

[सं. 82/रा.स.—गोवा/2/99/2000]

आदेश से,

शरन पाल सिंह, सचिव

Shri V. B. Nadicarni, Sr. Advocate, with Shri T.V. Nadicarni, Advocate, for the Applicant/Original Respondent No. 1.

Shri V.P. Thali, Advocate, for the Opponent/Original Petitioner.

CORAM : R.M.S. KHANDEPARKAR J.

Dated : March 3, 2000

ORDER

This is an Application under section 86(1) read with Section 82 of the Representation of People Act, 1951. By the present Application, the original Respondent No. 1 in the Election Petition No. 2 of 1999 has raised a preliminary objection as regards the non-compliance of Section 82(b) of the said Act on the ground of non-joinder of Shri Luis Alex Cardozo, who was the candidate for the election and against whom the allegations of corrupt practice have been made in the Election Petition. The Election Petition relates to the challenge of the election of the Applicant on 26-7-1999 as returned candidate for Rajya Sabha from Goa.

2. It is the case of the Applicant that the pleadings in the Election Petition disclose averments regarding corrupt practice being committed by the Applicant and his agents by offering and promising Cabinet berth to some of the 8 dissident M.L.As. of Congress Party and appointment on other important Public Offices to the remaining of them as also to one Independent M.L.A. with the direct object of inducing the said dissident Congress M.L.As. and the Independent M.L.A. to vote for the Applicant and that the said 8 dissident Congress M.L.As. and one Independent M.L.A. have been identified in the petition with their names and they include Luis Alex Cardozo.

3. The contention of the Applicant is that the provisions contained in Section 82(b) in clear and peremptory terms require the election petitioner to join as the Respondent to his Petition a candidate against whom allegations of corrupt practice are made in the Petition irrespective of the fact that the candidate had withdrawn his candidature subsequently and that, therefore, failure to comply with the said mandate inevitably attracts the penalty under Section 86 which requires the High Court to dismiss the election petition which does not comply with the provisions of Section 82 of the said Act. It is further the contention of the Applicant that Shri Luis Cardozo alias Luis Alex Cardozo, was a candidate duly nominated for the election, and applying the law laid down by the Apex Court in various decisions, even after the withdrawal of his candidature, continued to be candidate for the purpose of Section 82(b) of the said Act and since allegations of corrupt practices having been made against him in the Petition, he is a necessary party to the Petition and the Opponent original Petitioner having not joined him as the party to the Petition, the name is liable to be dismissed in limine.

4. In reply, the Opponent/original Petitioner has submitted that there are no allegations of any corrupt practice having been made against the said Shri Luis Alex Cardozo, he is not required to be impleaded as the party to the Petition. According to the Opponent, the pleadings in Para 30 of the Election Petition to which a reference is made in the Application filed by the Applicant for dismissal of the Petition do not constitute allegations of corrupt practice having been committed by the said Shri Luis Cardozo within the meaning of Section 123 of the said Act. Being so, the said Luis Alex Cardozo is not a necessary party to the Petition and hence the Petition cannot be rejected for non-joinder of the said person.

5. In Para 3 of the Election Petition it has been stated that on 17-7-1999, Shri Luis Alex Cardozo (Dummy candidate) withdrew his nomination papers and, therefore, the Applicant and the Opponent herein were declared as contesting candidates. Initially, when the Petition was filed, the name of the Candidate who had withdrawn his nomination was disclosed as Mr Luis Cardozo; however, pursuant to the application for better particulars filed by the Applicant

herein, it was clarified by the Opponent that the person referred to as Luis Cardozo in Para 3 of the Petition as also the person referred to as Luis Alex Cardozo in Para 3 is the one and the same person.

6. In Para 29 of the Election Petition, it has been stated that the Applicant herein is also guilty of adopting corrupt practice by using undue influence, since the Applicant has directly and also indirectly caused interference with free exercise of electoral rights of 8 dissident Congress M.L.As. who were directed to cast their vote by putting their mark on the ballot paper as directed by the Applicant so that at the time of counting of votes, the identification may be found as to whether the particular M.L.A. has voted as per the instructions given by the Applicant or not, and this has forced the dissident Congress M.L.As. to cast their vote in the particular manner as directed by the Applicant and, in fact, the Applicant and his counting agent Shri Ramesh Chennithala, who were responsible for directing the dissident M.L.As. to cast their votes in favour of the Applicant, inspected each and every ballot paper at the time of counting of votes so that it could be ascertained whether an M.L.A. had not voted in the manner directed by the Applicant and his agent Ramesh Chennithala. It is further stated that had there been no such undue influence exercised by the Applicant and his agent during the course of election, eight Congress M.L.As. and one Independent M.L.A. would have exercised their electoral rights according to their own choice and conscience and those 9 votes would have been held in favour of the Opponent herein since those M.L.As. were at loggerheads with the Chief Minister and the Congress Party and would not have voted for the Congress candidate but for the attraction of the Cabinet berth and other pivotal positions and in such a situation, the total number of votes polled in favour of the Opponent herein would have been 29 (29 votes already polled in favour of the Opponent plus 8 votes of dissidents, 1 Independent and 4 votes of M.G.P. candidates).

7. In the paragraphs preceding to Para 29 and right from Para 13 onwards the Opponent has referred to various news items stated to be disclosing the allegations of corrupt practices.

8. In Para 30 of the Election Petition it has been clarified that the corrupt practice committed by the Applicant and his agents was in the form of offering and promising of cabinet berths to some of the 8 dissident M.L.As. of Congress Party and appointment on other important public offices to the remaining of them as also to one Independent M.L.A. and they are identified as Shri Subash Shriodkar, Shri Somnath Zuwar, Shri Subash Pandekar, Smt. Victoria Fernandes, Shri Luis Alex Cardozo, Shri Jose Philip D'Souza, Shri Mauvino Godinho, Shri Babu Azgaonkar and Shri Indore Luis Fernandes (Independent), that the said corrupt practice has been committed with the consent of the respondent and is a gratification with the direct object of inducing the said 8 dissident Congress M.L.As. and one Independent M.L.A. to vote for respondent, and that the said 8 dissident Congress M.L.As. and one Independent M.L.A. in agreement to receive the said gratification voted for the said respondent at the said election.

9. The opponent has further stated in para 29 that the applicant herein is guilty of adopting corrupt practice as defined under section 123(1)(A)(b)(ii), 123(1)(E)(b) and also under section 123(2) of the Representation of the People Act, 1951, and in Para 30(A) that the Applicant has committed the corrupt practice as contemplated under section 123 of the Representation of the People Act, 1951. In Clause (II) of Para 30 it has been stated that the corrupt practice has been committed namely of exercising undue influence, that is to say direct interference with the free exercise of the electoral rights of the 8 dissident Congress M.L.As., 4 N.G.P. M.L.As. and 1 Independent M.L.A., thus amounting to corrupt practice, of undue influence within the meaning of Section 123(2) of the said Act.

10. Considering the pleadings in the Election Petition as a whole, there are no material facts disclosed details about the use of any undue influence over any of the M.L.As. to vote in favour of the Applicant herein. However, the pleadings in the petition certainly disclose the allegation of corrupt practice being adopted by the Applicant herein within the meaning of the said expression under Section 123 of the said Act. It has been specifically averred by the Opponent in the Election Petition that the corrupt practice has been committed by the Applicant and his agent by offering and promising Cabinet berths and appointment on other public offices to the

M.L.As. which included Shri Luis Alex Cardozo. It has also been stated in the Election Petition that the eight dissident Congress M.L.As. which included the said Luis Alex Cardozo, in agreement to receive the gratification, voted for the Applicant herein at the said election and ultimately, the applicant got elected to Rajya Sabha.

11. Section 123(1)(B) of the said Act clearly provides thus :—

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

(1) "Bribery", that is to say—

(A)

(B) the receipt of, or agreement to receive, any gratification, whether as a notice or a reward—

(a)

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purpose of this clause the term "gratification" is not restricted to pecuniary gratification or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78."

On plain reading of the above provision contained in Section 123(1)(b) it is clear that receipt of or agreement to receive any type of gratification in order to vote for a candidate would amount to bribery, i.e. "corrupt practices" for the purpose of the said Act. The term "gratification" has not been defined in the said Act but the Explanation clause to the said Section discloses wide meaning of the said expression. It has been amply clarified by the said Explanation clause that the gratification need not be only a pecuniary gratification nor it be a gratification which necessarily can be valued in terms of money. It will include all forms of reward. Clause (B) of the said Section 123(1) of the said Act further discloses that gratification might not have been a fait accompli prior to the voting and even agreement for any gratification can amount to corrupt practices within the meaning of the said expression under the said Act.

12. Considering the pleadings in the Election Petition it is apparent that the Opponent has clearly pleaded that the vote of Luis Alex Cardozo M.L.A., was secured by the Applicant herein by offering and promising him a Cabinet berth or an appointment on other important public office and, in fact, the said M.L.A. voted for the Applicant in agreement to receive the said gratification. The corrupt practices alleged against the Applicant in relation to Shri Luis Alex Cardozo are, therefore in the nature of agreement for gratification and consequential voting for the Applicant by the said Luis Alex Cardozo at the election held on 26-7-99 wherein the Applicant herein was declared as Returned Candidate. The contention of the Opponent herein that there are no allegations of any corrupt practice against the said Luis Alex Cardozo in the Petition is, therefore, devoid of substance.

13. Reliance was sought to be placed by Shri V. P. Thali, learned Advocate appearing for the Opponent, in the decision of the Apex Court in the matter of Daulat Ram Chauhan v. Anand Sharma, reported in 1984 (2) SCC 64 in support of his contention that before Section 82(b) of the said Act could be pressed into service for dismissal of the Petition, it must be proved whether or not the allegation of corrupt practices made against the candidate amounted to corrupt practices as contemplated under the provisions of Section 123 of the Act. That was a case where the election petition did not disclose clear and specific allegations against two of the withdrawn candidates. The decision is clearly distinguishable on facts.

14. It is not in dispute that the said Luis Alex Cardozo was a candidate for the election and he had withdrawn his candidature on 17-7-1999. Nonetheless, considering the decision of the Apex Court in the matter of Ram Pratap Chandel v. Chaudhury Lajja Ram reported in 1998(8) SCC 564, the said Luis Alex Cardozo was required to be joined as a party to the election petition in terms of the provisions contained in Section 82(b) of the said Act and on account of failure of the Opponent to join the said Luis Alex Cardozo as party to the Petition in spite of allegation of corrupt practices against him, the Petition is liable to be dismissed for non-compliance of mandatory provisions contained in Section 82(b) of the said Act. The judicial pronouncement in that regard if any required, then one can safely refer to the decision of the Apex Court in the matter of Udhav Singh v. Madhav Rao Scindia, reported in AIR 1976 SC 744.

15. In the result, the Application filed by the Applicant raising preliminary objections regarding the non-maintainability of the Election Petition is allowed and the Election Petition filed by the Opponent challenging the election of the Applicant is hereby dismissed as being non-maintainable, in terms of the provisions contained in Section 86(1) read with Section 82 of the Representation of the People Act, 1951, with costs.

R.M.S. KHANDEPARKAR, Judge

[No. 82/CS-GOA/2/99/2000]

By Order

SHARAN PAL SINGH, Secy.

नई दिल्ली, 31 अगस्त, 2000

आ.अ. 138.—लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 116 ग की उपधारा (2) के खण्ड (ख) के अनुसरण में, भारत निर्वाचन आयोग, 1999 की निर्वाचन याचिका सं. 2 (गडनित भवाजी शंकर बनाम फलेरी एडुआर्डो मार्टिन्हो) में मुम्बई स्थित उच्च न्यायालय के पणजी खण्ड पीठ के तारीख 3-3-2000 के निर्णय से उत्पन्न 2000 की सिविल अपील सं. 3224 में उच्चतम न्यायालय के तारीख 1-8-2000 के आदेश को एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/रा.स.—गोवा/(2/99)/2000]

आदेश से,

शरन पाल सिंह, सचिव

New Delhi, the 31st August, 2000

O.N 138.—In pursuance of clause (d) of sub-section (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 1-8-2000 of the Supreme Court of India in Civil Appeal No. 3224 of 2000 arising from the judgement dated 3-3-2000 of the High Court of Judicature at Bombay, Panaji Bench in Election Petition No. 2 of 1999 (Gadnis Bhawani Shankar vs. Faleiro Eduardo Martinho).

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3224 OF 2000

Gadnis Bhawani Shankar, V.

..Appellant

Versus

Faleiro Eduardo Martinho

..Respondent

JUDGMENT

Would the provisions of Section 82(b) of the Representation of the People Act, 1951 get attracted to a candidate who allegedly commits a corrupt practice, after the withdrawal of his candidature, as a voter, is the meaningful question requiring our consideration in this appeal?

The appellant was a candidate for Rajya Sabha elections for one seat from Goa in the year 1999. There were three candidates in the fray. Apart from the appellant and respondent, there was another candidate—Luis Alex Cardozo. All the three candidates had filed their nomination papers, which were accepted. After the acceptance of his nomination paper, Luis Alex Cardozo withdrew from the contest on 17th July, 1999. In the contest held thereafter, respondent was declared elected. The appellant filed an election petition, challenging the election of respondent, principally on the ground of commission of corrupt practices. In the election petition, respondent alone was arrayed as a party-respondent. After service of notice, respondent raised a preliminary objection by filing an application under Section 86 of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act'). It was averred that election petition was liable to be dismissed for non-compliance with the requirements of Section 82 of the Act. The preliminary objection was upheld and election petition was dismissed. Hence, this appeal.

Section 82(b) of the Representation of the People Act, 1951 provides :

"82—A petitioner shall join as respondents to his petition—

- (a)
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition."

Section 86, which deals with trial of election petitions, provides in sub-clause (1) as follows :

"86(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98."

In the instant case, Luis Alex Cardozo withdrew his nomination on 17th July, 1999. Election took place on 26, 1999. In the election petition, apart from various other allegations against the respondent, two allegations contained in paragraphs 30-D(ii) and 30-G alone are relevant for purposes of our discussion. Those paragraphs read thus :

"30-D—The corrupt practice committed by the respondent and his agents is as follows :

- (i)
- (ii) Offering and promising of cabinet berths to some of the 8 dissidents MLAs of Congress party and appointment to other important public offices to the remaining of them as also to one independent MLA who are namely Shri Subhash Sirodkar, Shri Somnath Zuwarkar, Shri Sanjay Bandekar, Smt. Victoria Fernandes, Shri Luis Alex Cardozo, Shri Jose Philip D'Souza, Shri Mauvino Godinho, Shri Babu Azgoankar and Shri Isidoro Luis Fernandes (Independent).

G—The said 8 dissident Congress MLAs and one independent MLA in agreement to receive the said gratification voted for the respondent at the said election."

The allegations, in a nutshell, contained in these two paragraphs are concerned, are to the effect that after withdrawal of his candidature, Cordozo agreed to receive gratification along with some other MLAs as a motive or reward to vote for respondent, acceptance or agreement to receive gratification as a motive

or reward to vote at the election is a corrupt practice dealt with in Section 123-(1)(B) of the Act which provides :

"123—Corrupt practices : The following shall be deemed to be corrupt practices for the purposes of this Act :—

- (1) "Bribery", that is to say—
 - (A)
 - (B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—
 - (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
 - (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation :—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bonafide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78".

A plain reading of the above provision shows that the receipt of, or agreement to receive, any gratification, as a motive or reward by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw or not to withdraw his candidature would amount to commission of a corrupt practice. The averments noticed in paragraphs 30-D(ii) and 30-G of the election petition (supra) contain allegations against Cardozo that he agreed to receive gratification as a motive or reward for voting in favour of the respondent. These averments would amount to allegations of commission of corrupt practice by Cardozo within the meaning of Section 123(1)(B) of the Act.

The argument of Mr. Krishnamani, learned senior counsel appearing for the appellant, however, is that since Cordozo had withdrawn from the contest, he could not be treated as a 'candidate', who was necessarily required to be impleaded as a party-respondent under Section 82(b) of the Act and if the corrupt practice was committed by him as a voter only, he was not required to be impleaded as a party respondent in the election petition. This argument does not appeal to us. Section 79(b) of the Act defines a 'candidate' to mean a person who has been or claims to have been duly nominated as a candidate at any election. There is no dispute that Cardozo had been

duly nominated as a candidate at the election in question. A similar argument as raised by Mr. Krishnamani came up for consideration in *Har Swarup & Anr. Vs. Brij Bhushan Saran & Others* [1967 (1) SCR 342].

Wanchoo, J. speaking for a three Judge Bench opined :—

“But the argument is that as the alleged corrupt practice was committed after the date of his withdrawal he would not be a candidate within the meaning of S. 82(b). We are of the opinion that if the effect of withdrawal is said to be that a person nominated can no longer be considered to be a candidate only after his withdrawal, the date of withdrawal cannot be a dividing line as to the time upto which he can be treated as a candidate and the time after which he cannot be treated as a candidate. If purity of elections has to be maintained a person who is a candidate as defined in S. 79(b) the Act will remain a candidate even after he withdraws till the election is over, and if he commits a corrupt practice whether before or after his withdrawal he would be a necessary party under S. 82(b) of the Act.”

(Emphasis ours)

In *Ram Pratap Chandel Vs. Chaudhary Lajja Ram and Others* [1998 (8) SCC 564], the requirements of Section 82 of the Representation of the People Act were dealt with and the Bench held opined that a candidate against whom a charge of corrupt practice had been made in the election petition, was required to be joined as a party to the election petition, irrespective of the fact whether he had withdrawn his candidature and not contested the election as such and had committed the corrupt practice after his withdrawal.

The Bench in *Ram Pratap Chandel's* case considered the judgment in *Mohan Raj Vs. Surendra Kumar Taparia & Ors.* 1969 (1) SCR 630, which has been pressed into aid by Mr. Krishnamani before as distinguished it in the following words :—

“Lastly, it is submitted that Periwai was being charged in his character as an election agent and not as a candidate. This submission runs counter to the amendment petition which says that he was not an election agent and therefore, he was really charged in his capacity as an individual and as he was a duly nominated candidate he had to be joined. The argument really contradicts the last amendment petition and cannot be entertained.

He submitted that the allegations of corrupt practice made against a person who, though he had been a candidate, had withdrawn in his capacity as the election agent of another candidate, did not necessitate his impleadment and this question had been left open in the aforesaid judgment. It is

difficult to agree. By reason of the contradiction, the argument was not entertained. But it is clear from what was stated therein above that a candidate who is duly nominated continues to be a candidate for the purposes of Section 82(b) in spite of his withdrawal and, if allegations of corrupt practice are made against him, he must be impleaded as a party to the election petition or the election petition must fail.”

(Emphasis ours)

We are in complete agreement with the exposition of law, as made above.

In our opinion, the allegations which have been made in the election petition are allegations of corrupt practice against Cardozo besides some others. Since, Cardozo was a nominated candidate, it was necessary to implead him as a party-respondent under Section 82(b) of the Act, irrespective of the fact that before the actual date of election, he had withdrawn his candidature and allegedly committed the corrupt practice after his withdrawal from the election. Thus, the answer to the question posed in the earlier part of the judgment is in the affirmative.

The learned Single Judge of the High Court committed no error in dismissing the election petition for non-compliance with the provisions of Section 82(b) of the Act. The appeal has no merits. It fails and is dismissed. Parties to bear their own costs.

New Delhi,

August 1, 2000.

Sd/- CJI.

Sd/- J.

(R. C. LAHOTI)

Sd/- J.

K. G. BALAKRISHNAN)

[No. 82/CS-GOA/2/99/2000]

By Order.

SHARAN PAL SINGH, Secy.

नई दिल्ली, 6 सितम्बर, 2000

आ.अ. 139.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा की 106 के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा 1998 की निर्वाचन अर्जी सं. 1 में कटक स्थित उड़ीसा उच्च न्यायालय के तारीख 4-8-2000 के आदेश को प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/रा.स.-उड़ीसा/1/98/2000]

आदेश में,

शरन पाल सिंह, सचिव

New Delhi, the 6th September, 2000

O.N. 139—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Orissa at Cuttack dated 4-8-2000 in Election Petition No. 1 of 1998 (Ananga Udaya Singh Deo vs. Ranganath Mishra and others)

THE HIGH COURT OF ORISSA, CUTTACK
ELECTION PETITION NO. 1 OF 1998

In the matter of a petition under sections 100 and 101 of the Representation of the People Act, 1951

Ananga Udaya Singh Deo .. Petitioner

Versus

Ranga Nath Mishra and others .. Respondents

For Petitioner.—M/s. Bijan Ray, Milan Kanungo, Siddhartha Das, Sanjaya Dash, Ajit Singh Baria, B. Mohanty and S. Pattanaik.

For Respondents.—M/s. G. Rath, R. K. Rath, B. Sarang and Ashok Mishra (R-1), M/s. G. N. Mohapatra, L.N. Patel and B.N. Mohapatra (R-2), M/s. Govind Das, M.M. Basu and D. Dey (R-3), Mr. P.K. Ray (R-4).

PRESENT :

THE HONOURABLE MR. JUSTICE CH. P.K. MISRA

Date of judgment—4-8-2000

Ch. P. K. Misra, J.—In this Election Petition, petitioner Ananga Udaya Singh Deo has challenged the election of Respondent No. 1 Ranga Nath Mishra, and Respondent No. 3 Manmath Nath Das, as Members of Council of State (hereinafter referred to as "Rajya Sabha") in the election held on 18th June, 1998.

2. Brief facts of the case are as follows :—The President of India issued a notification, which was published in the Gazette of India on 30-5-1998, calling upon the Members of the Electoral College of some of the States to elect Members to the Rajya Sabha in accordance with the provisions of the Representation of the People Act, 1951 (for short "the Act"). Pursuant to the aforesaid Presidential Notification, the Election Commission by its notification dated 30-5-1998 called upon the elected Members of the Orissa Legislative Assembly to elect three Members to the Rajya Sabha. In consultation with the Government of Orissa, the Election Commission also issued another notification appointing the Secretary of the Orissa Legislative Assembly as the Returning Officer and the Joint Secretary of the Orissa Legislative Assembly as the Assistant Returning Officer for the said election. The Returning Officer (respondent no. 4 herein), in his turn, issued notice of election in Form No. 1 as per the following programme :—

- (1) Filing of Nomination Papers.—Between 11.00 A.M. and 3.00 P.M. on any day (other than public holidays) not later than 6-6-1998.
- (2) Scrutiny of Nomination Papers.—At 11.30 A.M. on 8-6-1998
- (3) Withdrawal of Nomination Papers.—Before 3.00 P.M. on 10-6-1998.
- (4) Polling, if necessary.—Between 10.00 A.M. and 2.00 P.M. on 18-6-1998 in Room No. 54 of the Orissa Legislative Assembly Secretariat Building.

Copy of the aforesaid Notification issued by the Returning Officer is Annexure-1 to the Election Petition. Pursuant to such notification, four persons, i.e. the petitioner and respondents 1 to 3, filed their nomination papers. The petitioner's candidature was sponsored by Biju Janata Dal (B.J.D.) and that of respondents 1 to 3 was sponsored by the Indian National Congress (hereinafter referred to as 'Congress').

On 8-6-1998, the Returning Officer published a list of nominated candidates indicating the names of the aforesaid four persons. After scrutiny of nomination papers, he again issued a list in Form No. 4 on 8-6-1998 indicating therein that the aforesaid four persons were the validly nominated candidates for the election to the Council of States, 1998 by the elected members of Orissa Legislative Assembly. After the time of withdrawal was over, on 10-6-1998, when none of the candidates withdrew their candidature, the Returning Officer issued a list of contesting candidates in Form No. 7B indicating the aforesaid four names and the political party which sponsored their candidature. Polling took place on 18-6-1998 in which the candidates polled the following value of votes (value of each vote being assessed at 100):—

1. Ananga Udaya Singh Deo—3500
2. Manmath Nath Das—2700
3. Ranga Nath Mishra—4000
4. Rama Chandra Khuntia—4000

The Orissa Legislative Assembly has got 147 members, and it seems from the aforesaid that in all 142 members had validly cast their votes in the election held on 18-9-1998. In view of the total valid votes tendered, as per calculation, a person having polled votes valued at 3551 or more could be declared elected. As Ranga Nath Mishra and Rama Chandra Khuntia got 4000 value of votes each in their favour, they were declared elected in the first round leaving Ananga Udaya Singh Deo and Manmath Nath Das (petitioner and respondent No. 3 respectively) for the subsequent rounds. The Returning Officer transferred the excess votes polled by Ranga Nath Mishra and Rama Chandra Khuntia, as per the second preference, in favour of respondent No. 3 Manmath Nath Das. As a result, 444 value of votes were transferred from Ranga Nath Mishra and 440 value of votes were transferred from Rama Chandra Khuntia. After such transfer, the value of votes polled by Manmath Nath Das stood at 3584. This having exceeded the cut off point, i.e. 3551 value of votes, he was declared elected. The petitioner could not get any more vote in the second round. Thus, the value of votes polled by him remained at 3500, which is less than the cut off number, and, therefore, he could not be elected.

3. One of the grievances made by the petitioner is that though he had filed an application before the Returning Officer for supply of certain documents, there was unusual delay in supplying the same to him as he could get the documents only on 8-7-1998. The Returning Officer, in reply, has stated that on 20-6-1998 at 4.30 P.M. he received a request from the petitioner for supply of certain documents. As per the requirements of Rule 93(2) and (3) of the Conduct of Election Rules, 1966, he sent a FAX message on 23-6-1998 seeking permission/direction of the Election Commission for supply of the documents (Copy of the FAX message is at Annexure-I to the written statement of respondent No. 4). As no intimation was received from the Election Commission, he sent a reminder on 6-7-98 (Annexure-II to the written statement of respondent No. 4). Permission of the Election Commission was received on 6-7-1998 (Annexure-III to the written statement), and copies of the documents as requested by the petitioner were supplied to his authorised person Shri G. H. Sar on 8-7-1998. From the aforesaid facts, it is clear that the allegations made by the petitioner in para 2.1 and 2.2 of the Election Petition are not factually correct and legally tenable. Further, such delay if any, does not affect the process of election by which respondents 1 to 3 had been declared elected as the notification declaring them elected was issued on 18-6-1998.

4. Petitioner has challenged the election of respondents 1 and 3 on the following grounds :—

- (i) Long before the scrutiny fixed on 8-6-1998 and the withdrawal fixed on 10-6-1998, the Returning Officer not only pre-judged the validity of each of the nominations but also grossly violated the mandatory provisions contained in section 36(8) of the Act and rule 8 of the Conduct of Election Rules in publishing the list of validly nominated candidates, on 6-6-1998. Thus, the Returning Officer rendered the provision of scrutiny nugatory.

(ii) Although the rules and guidelines issued by the Election Commission prohibit electioneering within a stipulated distance of the polling premises, Janaki Ballav Patnaik, the then Chief Minister of Orissa, and Ranga Nath Mishra respondent No. 1, while sitting in the office of the Chief Minister in the Assembly Premises, which is very close to the polling room, compelled each and every Member of the Legislative Assembly to cast their votes as per their instruction. Before casting votes, each and every Congress M.L.A. entered the office of the Chief Minister. Each of them was given a token, written in the hand of the Chief Minister himself, indicating the preference to be endorsed (in favour of Congress candidates) in the ballot papers. With the said tokens, the elector-Members of the Legislative Assembly entered the polling booth to cast their votes indicating their preferences as per the direction of the Chief Minister. This was resulted in materially affected the election.

(iii) Respondent No. 1 Ranga Nath Mishra held the office of a Judge of High Court of Orissa and also the office of the Chief Justice of the said High Court. Thereafter, on elevation, he had held the office of a Judge of the Supreme Court of India and had also become the Chief Justice of India. On retirement, he had also held the office of Chairman, Human Rights Commission of India. As per the constitutional mandate incorporated in Article 124(7) of the Constitution of India, respondent No. 1 is disqualified to act or plead. The constitutional bar renders him disqualified under the Act to be chosen/elected to fill up the seat of the Rajya Sabha. As such, acceptance of his nomination paper for the Rajya Sabha election held in June, 1998 was improper and has materially affected the election. Had the candidature of respondent No. 1 been rejected, the other three candidates (including the petitioner) would have been automatically elected against the three vacancies.

(iv) As the petitioner had polled 3500 value of votes out of the total of 14200 value of vote (total valid votes polled—142), the Returning Officer was not correct in declaring respondents 1 to 3 selected in Form No. 23B. The Returning Officer and the officer assisting him for counting votes committed gross irregularities and acted in violation of the provisions of rules 71 to 85 of the Conduct of Election Rules.

(v) After Ranga Nath Mishra and Rama Chandra Khuntia (respondents 1 and 2 respectively) had been declared elected in the first round, the petitioner having received higher value of votes than respondent No. 3 (petitioner polled 3500/35 votes whereas respondent No. 3 polled 2700/27 votes) should have been declared elected. Transfer of votes in favour of respondent No. 3 is violative of rule 81 of the Conduct of Election Rules. Declaration of respondent No. 3 as elected by the purported transfer of surplus votes is vitiated, which has materially effected the election.

(vi) At the material point of time, the Indian National Congress had only 80 Members in the Orissa Legislative Assembly as against 66 Members belonging to various other parties. Ranga Nath Mishra was never a member of the Congress Party as per its rules and bye-laws. His name was not there in the list of proposed candidates prepared by the Pradesh Congress Committee, Orissa. However, he was imposed on the Pradesh Congress Committee by the Congress High Command from Delhi. Thereafter, Janaki Ballav Patnaik prepared a master plan to prove his strength before the High Command and planned for a "cross-voting" and induced respondent no. 1 to indulge in "Horse-trading" of appropriate number of opposition votes by which Congress could win all the three seats. Therefore, election of respondent no. 1 is void.

5. On the aforesaid pleadings. It has been prayed to declare the election of Ranga Nath Mishra, respondent no. 1, to be void and consequently to declare the petitioner to be duly elected. In the alternative, it has been prayed to declare the election of Manmath Nath Das, respondent no. 3, to be void and consequently to declare the petitioner as elected. It has also been prayed to allow inspection and counting of all used ballots and to call for all other relevant documents regarding account of ballots.

6. Respondent No. 1, Ranga Nath Mishra, in his written statement has challenged the maintainability of the Election Petition in view of the provisions of sections 81 and 82 of the Act. It has also been stated that as no cause of action has arisen, the Election Petition is liable to be dismissed as no ground under sections 100 and 101 of the Act has been made out. The further grounds taken by him are as follows :—

(i) With regard to the issuance of list of validly nominated candidates on 6-6-1998 as alleged by the petitioner, respondent no. 1 has stated that the said notice dated 6-6-1998 does not mention the list of "validly nominated candidates", but only mentions the names of "nominated candidates". The Returning Officer acted strictly in accordance with the provisions of law and committed no violation, much less and flagrant violation. As such, there is no question of pre-judging the validity of any nomination as the list of validly nominated candidates was published on 8-6-1998 after scrutiny and the list of contesting candidates was published on 10-6-1998 after withdrawal. Respondent no. 1 has also objected to the statement describing the list published on 6-6-1998 as a list of "validly nominated candidates" as in the said list it was only mentioned that the same was a list of "nominated candidates".

(ii) With regard to the allegation that respondent no. 1 set in the office of the Chief Minister in the Assembly premises and every member of the Assembly was instructed by the Chief Minister to cast votes in the manner as per his direction, respondent no. 1 has denied the same and has stated that he did not carry on any canvassing within the prohibited area of the polling. He has also stated that he has absolutely no knowledge about the Chief Minister issuing any instruction to any M.L.A. from his office room in the Assembly premises. He did not meet the Chief Minister on 18-6-1998 in his office room or elsewhere until the entire process of counting of votes was over. It has also been stated that the office of the Chief Minister in the Assembly premises is in the ground floor of the building and quite at a distance from the place of polling i.e. Room No. 54 which is in the first floor of the building.

(iii) There is no bar to his pleading or acting before the Parliament. Respondent No. 1 has denied the allegation regarding his disqualification to be a Member of the Parliament in view of the alleged constitutional bar contained in Article 124(7) of the Constitution. He has given four examples where persons holding offices of Judge in the High Court and Supreme Court had been elected as Members of the Legislative Assembly as well as the Parliament. Therefore, he is not disqualified to be a Member of the Rajya Sabha for which he had filed nomination and has been elected.

(iv) Respondent No. 1 has challenged the allegation made by the petitioner regarding the alleged irregularity of counting and transfer of votes and has drawn the attention of the Court to Article 80(4) of the Constitution. It has been submitted that the petitioner having secured votes valued at 3500, which is less than the required value of votes of 3551, has been rightly declared as not elected. The procedure followed by the Returning Officer was in accordance with law and, therefore, the declaration of result in Form No. 23B is not vitiated for any illegal manipulated entries, as alleged by the petitioner. He has also stated that the transfer of surplus votes from his as well as from Respondent No. 2 in favour of Respondent No. 3 was in accordance with law.

- (v) Having been invited by the President of the Indian National Congress to accept the sponsorship of her party to become a Member of the Rajya Sabha, he filed his nomination. The rules and the bye-laws of the Indian National Congress cannot be utilised by the petitioner to seek his disqualification. His name was sponsored by the Indian National Congress to become a candidate for the election to the Rajya Sabha in June, 1998 and the allegation that he was imposed on Pradesh Congress Committee from Delhi is not correct.

(vi) Respondent No. 1 has stoutly denied the allegation of preparation of any master plan by Janaki Ballav Patnaik for his election. He has also denied the allegation of cross-voting, horse-trading, etc. having been indulged by him and has questioned the maintainability of the aforesaid ground in absence of material facts pleaded in the petition.

7. Respondent No. 2, Rama Chandra Khuntia, has also filed a written statement, though no prayer has been made for setting aside his election. He has denied the correctness of the grounds for challenging the election of Respondents 1 and 3.

8. Respondent No. 3, Manmath Nath Das, in his written statement has raised a preliminary objection regarding the maintainability of the Election Petition and has stated that the petitioner has no cause of action to file the petition. He has also stated that the Election Petition is bad for non-joinder of necessary parties. He has denied the irregularity in publication of the validly (nominated candidates, as alleged in the Election Petition. The allegation regarding presence of Janaki Ballav Patnaik and Ranga Nath Mishra (Respondent No. 1) in the office of the Chief Minister inside the Assembly premises to compel each and every Member of the Orissa Legislative Assembly for casting their votes as per the instruction of the Chief Minister and the allegation of written tokens being given by the Chief Minister indicating the preferences to be endorsed in the ballot papers have been denied and Respondent No. 3 has prayed that the petitioner may be put to strict proof thereof. With regard to transfer of votes in his favour, Respondent No. 3 has categorically stated that the same was done in accordance with rules and the declaration of result consequent upon such transfer of votes is in accordance with law. It is submitted that the present Election Petition has been filed because of frustration on the part of the petitioner as he could only poll 35 votes out of 66 non-Congress votes and could not get any second preference votes.

9. Respondent No. 4, the Returning Officer, has also filed a written statement and submitted that filing of nominations, scrutiny of nominations and counting of votes are regulated under the provisions of the Constitution of India, the Act and the Rules made thereunder, the Registration of Electors Rules, the Parliament (Prevention of Disqualification) Act, and the Prohibition of Simultaneous Membership Rules. He has submitted that the allegation with regard to the delay in supplying the documents is not correct. There was no irregularity or illegality in declaring the "validly nominated candidates" as the same was done in accordance with law on 8-6-1998. There was also no illegality or irregularity in accepting the nomination of Ranga Nath Mishra (Respondent No. 1). Further, there was no illegality or irregularity in conduct of the election as well as counting of votes, specifically with regard to transfer of surplus votes and in declaring Respondents 1, 2 and 3 as elected candidates to fill up the three vacancies in the Rajya Sabha from the State of Orissa. It is submitted that the cut off value of votes was arrived at in accordance with law and the transfer of votes was made as per rules. The surplus votes of Respondents 1 and 2 were transferred in favour of Respondent No. 3 in the subsequent rounds as per the second preference of the voters. It may be stated here that none of such second preference votes was cast in favour of the petitioner. It has also been stated that in any event, the petitioner having secured less than the required value of votes i.e., 3551, could not have been elected before transfer of surplus votes as per the second preference.

10. On the above pleadings, the following issues have been framed :—

- (1) Whether the Election Petition as laid is maintainable ?

- (2) Whether the written statements of the respondents are in accordance with law ?
- (3) Whether Respondent No. 1—Ranganath Mishra is qualified to contest election to Parliament, and whether Article 124(7) of the Constitution of India, 1950 constituted a bar for such contest, and whether his nomination was improperly accepted ?
- (4) Whether there was any cross-voting by horse-trading of opposition votes ?
- (5) Whether the counting was conducted according to law and result was declared lawfully ?
- (6) Whether the petitioner is entitled to any other relief ?

11. The petitioner has examined five Member of the Orissa Legislative Assembly in addition to himself as witnesses in support of his case. Respondents 1, 3 and 4 have examined themselves as witnesses in support of their respective cases.

12. Now, let me take up the issues for consideration.

13. ISSUE No. 1 : An Election Petition challenging the election can be filed under section 80 of the Act before the appropriate High Court on the grounds mentioned in sections 100 and 101 of the Act. The relevant provisions are quoted below :—

"80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill up the seat under the Constitution or this Act or the Government of Union Territories Act;
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
- (i) by the improper acceptance of any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

- (a) that no such corrupt practice has been committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

(b) (omitted);

- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election and
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents;

then the High Court may decide that the election of the returned candidate is not void.

101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

- (a) that in fact the petitioner or such other candidate received a majority of the votes; or
- (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes;

the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."

In the present Election Petition, the petitioner has alleged that Respondent No. 1 was disqualified to be chosen to fill up the seat in the Rajya Sabha. He has also alleged that there was cross-voting by horse-trading, which amounts to corrupt practice, committed by Respondent No. 1. He has also claimed that but for the votes obtained by respondents 1 and 3 by corrupt practice, he would have obtained majority of votes. These points need elaborate discussion, which has been done in the succeeding paragraphs of the Judgment. Therefore, I am of the opinion that the Election Petition as laid is maintainable. Issue No. 1 is answered accordingly.

14. ISSUE NO. 2:—Though the petitioner has raised this issue, nothing has been contended on his behalf challenging the legality of the written statements filed by the respondents. As such, I am inclined to hold that the written statements filed by the respondents are in order. This issue is answered in favour of the respondents.

15. ISSUE NO. 5:—The procedure regarding counting of votes is enumerated in rules 71 to 85 of the Conduct of Election Rules, 1961. As has been stated in detail while stating the facts, respondents 1 and 2 having polled more votes than the cut off mark, which was fixed at 3551 value of votes, by receiving 4000 value of votes each, had been declared elected as per rule 78 by the Returning Officer (Respondent No. 4) leaving one seat to be filled up with two continuing candidates, i.e., the petitioner and Respondent No. 3, in the fray. The Returning Officer took recourse to rule 79 for transfer of surplus votes of respondents 1 and 2 as per the second preference of the voters. Rule 79 reads as follows:—

- "79. Transfer of surplus.—(1) If at the end of any count the value of the ballot papers credited to a candidate is greater than the quota, the surplus shall be transferred, in accordance with the provisions of this rule, to the continuing candidates indicated on the ballot papers of that candidate as being next in order of the elector's preference.
- (2) If more than one candidate have a surplus, the largest surplus shall be dealt with first and the others in order of magnitude:

Provided that every surplus arising on the first count shall be dealt with before those arising on the second count and so on.

- (3) Where there are more surpluses than one to distribute and two or more surpluses are equal, regard shall be had to the original votes of each candidate and the candidate for whom most original votes are recorded shall have his surplus first distributed; and

if the values of their original votes are equal, the returning officer shall decide by lot which candidate shall have his surplus first distributed.

- (4) (a) If the surplus of any candidate to be transferred arises from original votes only, the returning officer shall examine all the papers in the parcel belonging to that candidate, divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon and make a separate sub-paragraph of the exhausted papers.
- (b) He shall ascertain the value of the papers in each sub-paragraph and of all the unexhausted papers.
- (c) If the value of the unexhausted papers is equal to or less than the surplus, he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.
- (d) If the value of the unexhausted papers is greater than the surplus, he shall transfer the sub-parcels of unexhausted papers and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.
- (5) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the returning officer shall re-examine all the papers in the sub-paragraph last transferred to the candidate, divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon, and then deal with the sub-parcels in the same manner as is provided in the case of sub-parcels referred to in sub-rule (4).
- (6) The papers transferred to each candidate shall be added in the form of a sub-paragraph to the papers already belonging to such candidate.
- (7) All papers in the parcel or sub-paragraph of an elected candidate not transferred under this rule shall be set apart as finally dealt with."

When the surplus votes arising in the first count were transferred to the continuing candidates, the total value of votes of Respondent No. 3 became 3584, i.e., more than the quota fixed under rule 78, and as such he was declared elected along with respondents 1 and 2. As no second preference vote was cast in favour of the petitioner, his figure remained unchanged, i.e., 3500 value of votes, which was less than the cut off mark.

16. In this connection, the petitioner has placed reliance on rules 80 and 81, which are quoted below:—

- "80. Exclusion of candidates lowest on the poll.—(1) If after all surplus have been transferred as hereinbefore provided, the number of candidates elected is less than the required number, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon; and any exhausted papers shall be set apart as finally dealt with.
- (2) The papers containing original votes of an excluded candidate shall first be transferred the transfer value of each paper being one hundred.
- (3) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which, and at the value at which, he obtained them.
- (4) Each of such transfers shall be deemed to be a separate transfer but not a separate count.
- (5) If, as a result of the transfer of papers, the value of votes obtained by a candidate is equal to or greater than the quota, the count then proceeding shall be completed but no further papers shall be transferred to him.

(6) The process directed by this rule shall be repeated on the successive exclusions one after another of the candidates lowest on the poll until such vacancy is filled either by the election of a candidate with the quota or as hereinafter provided.

(7) If at any time it becomes necessary to exclude a candidate and two or more candidates have the same value of votes and are the lowest on the poll, regard shall be had to the original votes of each candidate and the candidate for whom fewest original votes are recorded shall be excluded; and if the value of their original votes are equal the candidates with the smallest value at the earlier count at which these candidates had unequal votes shall be excluded.

(8) If two or more candidates are lowest on the poll and each has the same value of votes at all counts the returning officer shall decide by lot which candidate shall be excluded.

81. Filling the last vacancies.—(1) When at the end of any count the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.

(2) When at the end of any count only one vacancy remains unfilled and the value of the papers of some one candidate exceeds the total value of the papers of all the other continuing candidates together with any surplus not transferred, that candidate shall be declared elected.

(3) When at the end of any count only one vacancy remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus remains capable of transfer, the returning officer shall decide by lot which of them shall be excluded; and after excluding him in the manner aforesaid, declare the other candidate to be elected."

17. A bare reading of the aforesaid provisions indicates that the situations in which the said rules are applicable are quite different from that in the present case. Here, counting was conducted in accordance with the provisions of rule 70 of the Conduct of Election Rules and the result was validly declared under rule 84 of the said Rules by the Returning Officer, and the argument of the petitioner with regard to the irregularity committed by the Returning Officer in transferring surplus votes during the counting of votes is not tenable in law. Thus, this issue is answered against the petitioner and in favour of the respondents.

18. ISSUE NO. 3:—The contention of the petitioner is that Respondent No. 1 is not qualified to become a candidate and as such acceptance of his nomination has materially affected the election. Acceptance of the nomination of Respondent No. 1 is hit by sections 32, 100(1)(a) and 100(1)(d) (i) & (iv) of the Act, as he was disqualified to become a candidate in view of the provision contained in Article 124(7) of the Constitution, which provides that no person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India. Therefore, to decide this issue it is necessary to examine what is the meaning and purport of the expressions 'act', 'plead' and 'authority' occurring in Article 124(7) of the Constitution.

19. The petitioner submits that Article 12 of the Constitution defines 'State' which includes the Parliament and other authorities. In this connection, he relies on the decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. -v- Brojo Nath, AIR 1986 SC 1571, wherein it has been held that Article 12 uses the word 'includes'. It thus extends the meaning of the expression "the State" so as to include within it also what otherwise may not have been comprehended by the expression when used in its ordinary legal sense. Further, Respondent No. 1 in his statement has admitted that Parliament is an authority. Therefore, it has to be found out whether a Member of Parliament while discharging his function as a Member of the House 'acts' or 'pleads' before the Parliament.

20. In this connection, learned counsel for the petitioner brought to my notice the Constitution Bench decision of the Supreme Court in Rajasthan State Electricity Board -v- Mohan Lal, AIR 1967 SC 1857, wherein it has been held (para-5 at page 1862):—

"The meaning of the word 'authority' given in Webster's Third New International Dictionary, which can be applicable is 'a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise'. This dictionary meaning of the word 'authority' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression 'other authorities' is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words 'other authorities' are used in Art. 12 of the Constitution."

This has been followed in Central Inland Water Transport Corporation Ltd. -v- Brojo Nath AIR 1986 SC 1571. In para-24 of the judgment, the Supreme Court has observed:—

"Article 12 defines the expression 'the State' while the other Articles of the Constitution, such as Article 152 and Article 308 and clause (58) of Section 3 of the General Clauses Act defines the term 'State'. Deliberate use of the expression 'the State' in Article 12 as also in Article 36 would have normally shown that this expression was used to denote the State in its ordinary and Constitutional sense of an independent or sovereign State and the inclusive clause in Article 12 would have extended this meaning to include within its scope whatever has been expressly set out in Article 12. The definition of the expression 'the State' in Article 12 is, however, for the purpose of Parts III and IV of the Constitution. The contents of these two parts clearly show that the expression the State in Article 12 as also in Article 36 is not confined to its ordinary and Constitutional sense as extended by the inclusive portion of Article 12 but is used in the concept of the State in relation to the Fundamental Rights guaranteed by Part III of the Constitution and the Directive Principles of State Policy contained in Part IV of the Constitution which principles are declared by Article 37 to be fundamental to the governance of the country and enjoins upon the State to apply in making laws."

According to the learned counsel for the petitioner, in view of the aforesaid decisions, the Upper House being an authority, Article 124(7) is a positive bar for a person who held the office of a Judge of the Supreme Court to act/plead in or before such authority. It is pertinent to mention that Article 124(7) does not use the word 'in' or 'before'. It is then submitted that Article 100 gives a glimpse of the words "to act". Unfortunately, while going through the said Article, I do not find any trace of the expression "to act" in relation to the rights and/or duties of a Member of Parliament. The provision contained in Article 100 relates to voting in Houses, power of Houses to act notwithstanding vacancies and quorum. The petitioner then relied on the meaning of the word 'act' as given in Black's Law Dictionary, which reads, "performance, exercise of power, exercise of individual power something done by an individual as a legislator". He also relied on the evidence of Respondent No. 1 who has admitted that somebody has to perform as a Member in or before the Council of States. It is further submitted that duties are imposed specifically on the Members of Parliament to render service in the Parliament, and rendering service amounts to acting in or before the Parliament. It is also submitted that different Articles of the Constitution postulate a member to act in or before the Parliament. In reply to the plea taken by Respondent No. 1 in his written statement that a number of High Court and Supreme Court Judges have in the past stood for election and have been elected and the correctness of their candidature or election has never been challenged, the petitioner submits that one wrong or illegality does not justify similar wrong, illegality."

or fraud. It is also submitted that the Members of the Rajya Sabha enjoy similar rights and immunities as enjoyed by the Members of the House of Commons. In England, retired Judges are disqualified to become Members of the House of Commons under section 12(2) of the Supreme Court (Consolidation) Act, 1925. The founding fathers of our Constitution being conscious of such enactments incorporated Article 124(7) creating bar for the retired Judges of the Supreme Court to become Members of Parliament. Article 124(7) is corollary to Article 105(3) and Article 194(3). Referring to the discussions in the Draft Committee of the Constitution and the statement of Ambedkar that "In India Judges are intended to be non-political and free from political pressure". It is submitted that what is intended by Article 124(7) is to insulate Judges against political pressure, political/executive influence, allurements, and temptation and to remain above reproach. It also aims at checking internal corrosion of judiciary.

21. As reference has been made to Articles 12, 13, 100, 104 and 105 of the Constitution, I would like to quote the said provisions:

"12. Definition.—In this Part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. Laws inconsistent with or in derogation of the fundamental rights.—(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law;

(b) law in force includes laws passed or made by a Legislature or other competent authority in the Territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.

100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—

(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have right to

speaking in, and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to Members of Parliament.

22. All these provisions do not throw any light on the meaning of the expression "plead or act" used in Article 124(7). It is submitted by respondent No. 1 that it is a sound rule of construction to give the same meaning to the same word occurring in different parts of an Act of Parliament, unless the words have been used in a different context or in a different sense. Therefore, the words "plead or act" used in Article 124(7) and Article 220 should be given the same meaning in view of the heading of Article 220 reading "Restriction on practice after being a permanent Judge", the word 'act' or 'plead' must be construed in that context, i.e., restriction on practice. Same meaning should also be given to this expression occurring in Article 124(7). Therefore, being a Judge of the Supreme Court is not a disqualification for membership of the Parliament. Respondent No. 1 further submits that Parliament cannot be equated with any other authority as used in Article 124(7). Parliament is the supreme law-making organ created by the Constitution and its status cannot be reduced to that of an authority mentioned in Article 124(7). In this context, reliance is placed on the decision of the Supreme Court in *Rajasthan State Electricity Board v. Mohan Lal*, (supra). It is submitted that the provisions of the Constitution contained in Chapter-II directly cut at the root the petitioner's contention that respondent No. 1 was disqualified under Article 124(7). In the Chapter dealing with Parliament, Article 84 provides for qualification for membership of Parliament, which reads as under:—

"84. Qualification for membership of Parliament.—A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

- (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

Similarly, Article 102 provides "disqualifications for membership", which runs as follows :—

"102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government

of any State, other than an office declared by Parliament by law not to disqualify its holder.

- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgment of allegiance of adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purpose of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

- (2) A person shall be disqualified for being a member of either House of Parliament if he is disqualified under the Tenth Schedule."

It is submitted that there is no prohibition for a Judge of the Supreme Court to become a Member of the Parliament as per the Act. Further, in view of the provisions contained in Articles 84 and 102 regarding qualification and disqualification for membership of the Parliament including the Council of States, no addition or subtraction can be made in the list of qualifications/disqualifications. The Court cannot and something as qualification/disqualification which is not enumerated as such in the aforesaid two Articles and the relevant statutory laws in the Constitution every topic has been arranged in a separate Chapter and it is not expected that while prescribing qualifications and disqualifications for membership of Parliament in Chapter-II, the Constitution makers also intended to prescribe the same elsewhere, i.e., in Article 124(7) of Chapter-II dealing with Union Judiciary. Hence, except Articles 84 and 102, no other provision in the Constitution can be taken as laying down the qualification or disqualification for membership of Parliament.

23. Article 220 is an analogous provisions with regard to the Judges of the High Courts, which reads as under:—

"220. Restriction on practice after being a permanent Judge.—No person who, after the commencement of this Constitution has held office as a permanent Judge of a High Court shall plead or act in any Court or before any authority in India except the Supreme Court and the other High Court."

Articles 79 and 80 refer to the constitution of Parliament and composition of the Council of State, Article 84 prescribes the qualification for membership of Parliament. Article 99 provides the oath of affirmation by the Members of Parliament. Article 102 lays down disqualification of membership. Article 105 prescribes the powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof,

Article 120 prescribes the language to be used in Parliament and Article 121 provides for restriction on discussion in Parliament. A reading of these provisions makes it clear that the rights and privileges of the Members of Lok Sabha and Rajya Sabha are codified in the Constitution itself and one need not look beyond it to the legislations of other countries. Each Member forms a constituent of the respective House. A constituent cannot be deemed to act before the forum. I have already quoted the provision contained in Article 220 which imposes certain restriction on High Court Judges. The said Article has a heading, namely, "Restriction on practice after being a permanent Judge". Of course, no such heading is available in Article 124(7), though Article 124 has a heading which reads, "Establishment and Constitution of Supreme Court". However, the words used in Articles 124(7) and 220 are the same, i.e., "plead or not before any court or authority".

24. A bare reading of Article 124(7) would make it clear that what was intended by the Constitution makers while prescribing the bar in this Article was that no judge of the Supreme Court should plead or act in any court or before any authority within the territory of India. The words "plead or act" used in Article 124(7) have to be read with reference to the provision contained in Article 220 where same words have been used while prescribing restriction on practice after being a permanent Judge of a High Court. That means, the words "plead or act" refers to practice before any authority. As held by the Supreme Court in the case of *K. N. Guruswamy v. State of Mysore*, AIR 1954 SC 592, same word appearing in the same set of rules must be given the same meaning unless there is anything to indicate to the contrary. That apart, a Member of Parliament is a constituent of the Parliament or a part of the Parliament and his views expressed in the affairs of the Parliament cannot be termed as "acting or pleading before the Parliament". He is duty-bound and he has a right to express his views before the Parliament on different subjects, which cannot be taken as pleading or acting before the Parliament. Therefore, the expression "plead or act" used in Article 124(7) can only be interpreted to be a restriction for practice before any authority and it does not refer to the functioning or performance of a Member of the House of People or Council of States, i.e., Parliament. The decisions cited by the petitioner in support of his contention are on different context and have no relevance so far as interpretation of Article 124(7) of the Constitution is concerned, and they cannot be called in aid of the petitioner on this issue. I am, therefore, of the view that Article 124(7) does not create a bar or disqualification for a Judge of the Supreme Court to offer his candidature for membership or to become a Member of the Parliament. The nomination of respondent No. 1 has been validly accepted by the Returning Officer and the submission of the petitioner that acceptance of his nomination was improper and has materially affected the election is not tenable in law. The issue is answered accordingly.

25. Issue No. 4.—This issue has been framed in the following manner :

"Whether there was any cross-voting by horse-trading of opposition votes?"

The petitioner submits that indulgence in horse-trading amounts to fraud on election process or fair election and vitiates the election. As such it is hit by the law propounded by the Supreme Court and is covered by section 100(1)(d)(iv) of the Act. Canvassing and soliciting votes within 100 metres of the polling booth materially affected the election and is hit by section 130 of the Act. As such the case comes within the purview of section 100(1)(d)(iv). The whip issued on the M.L.As. by the Congress Party is a fraud on the constitutional provisions. The petitioner also submits that respondent no. 1, though was not a member of the Congress Party, was sponsored as a candidate by the said party and got elected, which is a fraud and is in violation of the provisions of the Act. According to the petitioner, pleading in this respect have been made in paragraphs 7, 12, 13 and 14 of the Election Petition. In para-7 it has been stated that the Chief Minister J. B. Patnaik and respondent no. 1 Ranga Nath Mishra, sitting in the Chief Minister's office on 18-6-1998, compelled each and every Congress M.L.A. to cast votes as per their instructions. All Congress M.L.As. entered the Chief Minister's office and were given a token each indicating the preference to be endorsed in the ballot papers. Para-12 deals with the counting of votes and has no relevance to the present issue. Para-13 also relates to counting of votes and declaration of result of the election and is not relevant for the present purpose. In para-14, the petitioner has stated that the electors expressed their voluntary, spontaneous and massive support in his favour. The Congress Party had only 80 members in the Assembly as against 66 members belonging to the various other parties including the B.J.D. Subsequently, however, the petitioner admitted that this is a mistake and stated that the Congress Party had 83 members all of whom had cast votes, but three votes were rejected. It has also been stated in para-14 that respondent no. 1 Ranga Nath Mishra was never a member of the Congress Party and, therefore, was disqualified to be sponsored as a candidate of that party under the rules and bye-laws of the Indian National Congress. Shri Mishra's name was not reflected in the list prepared by the Pradesh Congress Committee (P.C.C.) and carried by its President to Delhi for approval of the Congress High Command. He was imposed on the P.C.C. from Delhi. Shri J. B. Patnaik prepared a master plan to prove his strength to Delhi by way of cross-voting and induced Ranga Nath Mishra to indulge in horse-trading of appropriate number of opposition votes, by which Congress could win all the three seats. Sub-para (iv) of para-24 again deals with the acceptance of candidature of respondent no. 1 and has no relevance to the present issue.

26. Respondent no. 1 in para-10 of his written statement has denied the averments made in para-7 of the Election Petition except the fact that the polling was held between 10.00 A.M. and 2.00 P.M. on 18-6-1998 inside the Orissa Legislative Assembly. The polling was held in a large hall on the first floor of the building, which is otherwise referred to as Committee Room No. 54. The observer of the Election Commission was present throughout the entire polling process. He has denied that he sat in the office of the Chief Minister in the Assembly premises during election process and that the Chief Minister compelled each and every member of the

Assembly to cast vote as per his instruction. He did not carry on any canvassing within the prohibited area of the polling. He did not meet the Chief Minister on 18-6-1998 in his office room, which is in the ground floor of the Assembly building and quite at a distance from the place of polling, or elsewhere until the entire process of election and counting was over. He expressed his ignorance relating to the manner in which the Chief Minister issued instruction, if any, to the M.L.As. from his office room, as alleged. In para-17, respondent no. 1 has stated that none of the electors of the Congress Party expressed his voluntary, spontaneous and massive support in favour of the petitioner. He has disputed the figure relating to strength of different parties in the Assembly, as mentioned in para-14 of the Election Petition. He has also stated that even though he is not a member of any political party, being invited by the National President of the Congress Party to accept the sponsorship of her party to become a member of the Rajya Sabha, he filed his nomination. The rules and bye-laws of the Congress Party, if any, cannot be utilised by the petitioner to seek disqualification of this respondent in this election petition. He disputed the assertion regarding his name not being there in the list prepared by the P.C.C. He also denied the allegation of his indulgence in cross-voting and horse-trading.

27. Respondent no. 3 also denied the allegation made by the petitioner in para-7 of the Election Petition with regard to the compulsion to each and every member of the Assembly to cast votes as per the direction of the Chief Minister and respondent No. 1, and with regard to token written in the hand of the Chief Minister indicating the preference being handed over to the members. He has stated that all these allegations are nightmares of the petitioner, he having lost the election because of infidelity of his prospective followers. He has demanded strict proof of the allegations made by the petitioner. In para-11 of the written statement, respondent no. 3 has stated that the statements made in para-14 of the Election Petition are more surmises.

28. The petitioner submitted that on the basis of the strength of the Congress Party in the Assembly, two of its candidates could be elected, but because of the master plan for cross-voting prepared by J. B. Patnaik and his inducement to respondent no. 1 to indulge in horse-trading of appropriate number of opposition votes, the petitioner could not be elected. It is further submitted that respondent no. 1 has admitted that whip had been issued by the Congress Party to support the party candidates. Respondent no. 1 has also admitted in his evidence that he is not a member, even a primary member, of the Congress Party and he has not joined the Congress Party by becoming a Member of the Rajya Sabha, but he has become a member of the sponsoring party under the rules of Parliament. By referring to the evidence of the Returning Officer (R.W. 3), the petitioner submitted that R.W. 3 has stated that respondent no. 1 filed nomination as a Congress candidate. Ext. H, the nomination of respondent no. 1 in Form 2C filed on 8-6-1998, reveals that he was a candidate of Congress Party. It is submitted that though the petitioner has not pleaded fraud specifically in the Election Petition, pleadings are not to be construed in hyper-technical manner, but it is to be seen whe-

ther allegations give sufficient notice to the other side. It is also urged that pleadings are not to be construed with formalistic rigor, but to be read as a whole. As such, the pleadings available on the Election Petition give sufficient notice of fraud which commenced with the conspiracy of J. B. Patnaik and Ranga Nath Mishra. Therefore, the point regarding perpetration of fraud is available to be urged by the petitioner within the framework of the present issue. It is submitted that in total 107 votes were polled by the Congress candidates as against the party strength of 83 M.L.As. Shri J. B. Patnaik has also not been examined by the respondents to deny the assertion made in the Election Petition. It is further submitted that no witness having been examined by respondent no. 1 to prove that 40 M.L.As. voted for him, the allegation of fraud on the ground mentioned in the Election Petition is uncontroverted. In view of the allegation made in the Election Petition and the admission made by respondent no. 1 that he is not a member of the Congress Party, filing of his nomination as a Congress candidate amounts to fraud on the Constitution and the Act. It also amounts to fraud on the election petitioner impairing fair election. It is then submitted that there is no rule or practice in the Parliament that a Member of the sponsoring party becomes a member of such party. Rather, the rules prescribe that a Member, before taking oath, has to give a declaration of his party affiliation and register rules of his party. In this context, reliance is placed on rules 3(b) and 4 of the Members of Rajya Sabha (Disqualification on grounds of Defection) Rules, 1985. Respondent no. 1 not being a member of the Congress Party, perpetrated fraud on the election process and purity of election by filing fraudulent nomination indicating affiliation to Congress Party, which vitiated the election. It is also submitted that the Tenth Schedule of the Constitution postulates whip in relation to voting in the House in connection with issues for decision of the House. It is not attracted to, nor does it govern, an election held under the Act. Therefore, issuance of whip by the Congress Party is a fraud on the fair election and thus vitiated the purity of the election. Though infringement has not been specifically pleaded in the Election Petition, the fact of respondent No. 1 being a former Chief Justice of India, which has been admitted by him and thus has come to Court's knowledge, cannot be brushed aside on the flimsy pretext of absence of pleading. It is also submitted that the fraud is so blatant that its exposition vitiates the entire election process, which calls for Court's interference declaring election of all the three candidates (respondents 1, 2 and 3) void. It is submitted that all principles and doctrines relating to election aim at purity of election. House-trading and cross-voting affect the purity of election. Therefore, the point has to be dealt with in larger public interest. The submission of the respondents that specific issue of fraud having not been pleaded in the Election Petition cannot be allowed to be urged, cannot be pressed into service to suppress a wrong coming to light and to protect a fraud on the election process. It is further submitted that admittedly there was cross-voting of 27 members of the opposition camp in favour of the Congress candidates, as all the three candidates sponsored by Congress together polled 107 votes as against the party strength of 83 members in the Assembly, out of which three votes were rejected. This

leads to the irresistible inference that the Congress could manage to get 27 additional votes from the opposition camp. Therefore, onus is on respondents 1 to 3 to lead evidence and place on record positive material to establish the manner in which those extra 27 votes were procured. As against the statement of respondent no. 1 in his evidence that in view of section 94 of the Act relating to the doctrine of secrecy of ballots, he does not want to summon or produce witnesses (M.L.As.) who gave first preference votes, it is submitted by the petitioner that the Supreme Court, having since laid down that the privilege under section 94 is not inviolable, waiving such privilege a responsible voter in this case should unravel all foul-play by appearing in court and deposing the factum of his preference. Adverse inference has to be drawn that all such M.L.As, if examined by respondent no. 1, would have deposed to have voted on account of horse-trading. The petitioner relies on the evidence of P.Ws. 1 to 4, who have deposed about the modus operandi of horse-trading by respondent no. 1, which has been duly corroborated by P.Ws. 5 and 6.

29. In view of the above submissions, it is necessary to go through the evidence.

P.W. 1 Sachidananda Dalal, who was an M.L.A., has stated that on 17-6-1998, respondent no. 1 accompanied by another person, whom he did not know, came to his quarter and asked him to help respondent no. 1 as he was contesting election. But, he expressed his inability as whip had been issued by his party and also because respondent no. 1 was contesting from Congress (I) party. Then respondent no. 1 told him that if he looked after his interest, he would look after the interest of the witness. But, P.W. 1 politely told him that he could not be a party to cross-voting. P.W. 1 has further stated that on the date of election he saw respondent no. 1 in the chamber of the Chief Minister J.B. Patnaik in the Assembly premises. He found Sh. Patnaik issuing chits to the members of his party in the Assembly. He has also stated that he has not disclosed this fact to anybody except the election petitioner Ananra Uday Singh Deo. In cross-examination he has stated that he had not gone to the room of the Chief Minister at any time prior to completion of voting.

Kunduru Kushal, another M.L.A., has been examined as P.W. 2. He has stated that on 17-6-1998 at about 10.00 A.M. respondent No. 1, to whom he did not know earlier, came to his quarter, introduced himself and requested to cast vote in his favour. He declined to accept such request saying that whip had been issued by his party and, therefore, it would not be possible on his part to cast vote in favour of respondent No. 1. This witness has also stated that at that time respondent no. 1 was carrying an attache-case which was offered to him, but he politely declined to accept the same saying that he belongs to Scheduled Caste and it would not be proper on his part to accept the attache-case. He requested respondent No. 1 to take back the same. He has further stated that he has informed this fact to the election petitioner.

Balabhadra Maihi, another Member of the Legislative Assembly, has been examined as P.W. 3. He has stated that on 17-6-1998 at about 11.00 A.M. or 11.30 A.M. respondent No. 1 came to his official quarter and

requested to cast vote in his favour saying that though he was a candidate of the Congress Party, He had worked for the poor and down-trodden, more particularly the Adivasis, and had rendered many judgments which helped the poor and down-trodden P.W.s declined to accept such request saying that being a disciplined member of a political party, he was to go by the dictates of his party and not otherwise. Respondent No. 1 told this witness that some members of the opposition had assured him to cast their votes in his favour and offered an attache-case to P.W. 3 stating that it contained Rs. 10,00,000 which could be utilised for the betterment of Adivasi Community. P.W. 3 declined to accept the same saying that being a simple Adivasi, he cannot be lured by money and requested respondent No. 1 not to offer money. Thereafter, respondent No. 1 left. P.W. 3 has stated that he has informed this fact to the election petitioner.

P.W. 4, Dr. Kamala Das, is also a Member of the Legislative Assembly. She has stated in her evidence that on 16-6-1998 she received a telephone call in the night that respondent no. 1 wanted to see her. As it was past midnight, she told the caller to request respondent No. 1 to see her the next day. When she was coming from a meeting, respondent No. 1 met her and requested to cast her vote in his favour, to which she declined saying that a candidate of her party was contesting. Respondent No. 1 told her that he had gained over 7 to 9 opposition members and it would not be difficult on her part to cast vote in his favour. Then P.W. 4 told respondent No. 1 that it was not proper on his part to make such a request as he is a retired Chief Justice of India. After that, respondent No. 1 left.

Another M.L.A., namely, Rama Krishna Patnaik, who was the election agent of the petitioner, has been examined as P.W. 5. He has stated that he heard rumour that respondent No. 1 was trying to gain over some members of his party. In cross-examination he has stated that he has not lodged any F.I.R. on the basis of such rumour and he had not given any importance to such rumours except apprehending the likelihood of cross-voting by some members. He had not informed the Election Commission or his representative or the Returning Officer about the rumours.

The petitioner has examined himself as P.W. 6. In his evidence, he has stated about hearing rumours that Congress Party was trying to gain over some of the opposition M.L.As, as it had nominated three candidates even though it had got 83 M.L.As. In the Assembly as against 63 M.L.As, belonging to non-Congress Parties. He has stated that he was the sponsored candidate of Biju Janata Dal and was not sponsored by all the non-Congress Parties. Some M.L.As belonging to his party had been to the Chief Minister's chamber to find out what was happening to the opposition camp. He has also stated that he has not questioned the election of respondent No. 1 on the ground of wrong or improper counting of votes, but on other grounds. Though he has not specifically stated about respondent No. 1 offering money or going round the M.L.As, seeking their co-operation, the same is covered by the expression 'horse-trading', which has been used in the Election Petition. As he was informed by his lawyer that evidence is not to be pleaded, it was not felt necessary to give details.

The expression "corrupt practice" or 'bribery' has not been used in the Election Petition. Nor has it been mentioned in the Election Petition that respondent No. 1 went round various M.L.As. of his (petitioner's) party seeking their co-operation. The names of P.Ws. 1 to 5 have also not been indicated in the Election Petition. He has also stated that he was aware that corrupt practice is to be specifically pleaded. According to him, paragraph-14.3 of the Election Petition is sufficient compliance of the said requirement.

30. Now, let me discuss the evidence adduced by the respondents. Respondent No. 1 as R.W1 has stated in his evidence that he never met P.W. 2, 3 and 4 before they came to Court to give evidence. P.W.1 got himself introduced at Delhi Airport some time after the election. He also met P.W.1 in the year 1999 when an all-party body met the Prime Minister for allocation of further funds for the K.B.K. districts. He denied to have offered any attache-case to P.W.2 on 17-6-1998. He also denied to have offered an attache-case containing Rs. 10,00,000 to P.W. 3 on 17-6-1998. The fact that he himself or any body else on his behalf telephoned P.W.4 on 16-6-1998 at midnight has been refuted by this witness. According to R.W. 1, he did not go to P.W. 4's house the next morning and did not state to her that 7 to 8 opposition members had been gained over to vote for Congress candidates. He has also stated that P.Ws. 1 to 4 have made allegations against him without any basis which has given him mental pain as he is not accustomed to this process. He has never offered any bribe to anyone in his life. He denied of any conspiracy between him and J. B. Patnaik and stated that he had no concern with regard to procurement of votes, if any. He has stated that he had no knowledge about cross-voting or horse-trading, if any, engineered by J. B. Patnaik and about procurement of 27 votes by such process.

31. The petitioner, however, submitted that in the Election Petition he has pleaded the fact of horse-trading and 'cross-voting', which impaired the purity of election. Horse-trading is clear from the evidence of P.Ws. 1 to 5, and it is not necessary to give in detail the source of knowledge of the petitioner. It is submitted that admittedly additional votes were cast in favour of the Congress candidates, which is the starting point. Therefore, respondent No. 1 should have examined the M.L.As. who cast their votes in his favour. In this connection, reliance was placed on *S. Rashbir Singh Gill-v-S. Gurcharan Singh Tohra*, AIR 1980 SC 1362, wherein it was held :—

"Secrecy of ballot though undoubtedly a vital principle for ensuring free and fair election, it was enshrined in law to subserve the larger public interest, namely, purity of election for ensuring free and fair election. The principle of secrecy of ballot cannot stand aloof or in isolation and in conformation to the foundation of free and fair election, viz. purity of election. They can co-exist but as stated earlier, where one is used to destroy the other, the first one must yield to principle of purity of election in larger public interest. In fact secrecy of ballot, a privilege of the voter, is not inviolable and may be waived by him as a responsible citizen of this country to ensure

free and fair election and to unravel foul play."

Reliance was also placed on the decision of the Supreme Court in *A. Neelalohithadasan Nadar -v- George Masorene*, 1994 AIR SCW 2198, wherein the Supreme Court observed :—

"The existence of the principle of secrecy of ballot cannot be denied. It undoubtedly is an Indispensable adjunct of free and fair elections. The Act statutorily assures a voter that he would not be compelled by any authority to disclose as to for whom he has voted, so that he may vote without fear or favour and free from any apprehension of its disclosure against his will from his own lips. But this right of the voter is not absolute. It must yield to the principle of purity of election in larger public interest. Secrecy of ballot principle presupposes a validity cast vote, the sanctity and sacrosanct of which must in all events be preserved. When it is talked of ensuring free and fair elections, it is meant elections held on the fundamental foundation of purity and the secrecy of ballot as an allied vital principal."

32. In reply to the aforesaid submission, learned counsel for respondent No. 1 submitted that there is no charge of bribery or corruption levelled against respondent No. 1 in the Election Petition, far from giving any material facts as provided in section 83(1)(a) or material particulars as required by section 83(1)(b) of the Act, He relied on a decision of the Supreme Court in *Jagan Nath v. Jaswant Singh*, AIR 1954 SC 210, wherein it has been held (para-7 at p. 212) :—

"The general rule is well settled that the statutory requirement of the election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is purely a statutory proceeding unknown to common law and the court possesses no common law power. It is well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

Reliance is also placed on another decision of the Supreme Court in *Dhartipakar Madan Lal Agarwal-v-Rajiv Gandhi*, AIR 1987 SC 1577, in paragraph 14 of which the Apex Court has held :—

"The Act is a complete and self-contained Code within which any right claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by section 87. The Scheme of the Act would show that an election can be questioned under the statute as provided by section 80 on the grounds as contained in section 100. Section 83 lays down a

mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition falls to make out a ground under section 100. It must fall at the threshold. Allegations of corrupt practice are in the nature of criminal charge, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general, and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry."

Learned counsel for respondent No. 1 also submitted that without any pleading of bribery or corrupt practice in the Election Petition as against respondent no. 1, the evidence of P.Ws 1 to 4 and the averment of the petitioner in relation to the alleged horse trading indulged by respondent No. 1 has to be struck off. It is submitted that an election petition is purely a statutory proceeding and the court possesses no common law power to dispense with the statutory requirements. Section 80 of the Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Part-VI of the Act. Section 80A provides that election petition shall be filed only in the appropriate High Court. As per section 81, an election petition calling in question an election may be presented only on one or more of the grounds specified in sub-section (1) of section 100 and section 101 of the Act and such petition must be filed within 45 days from the date of declaration of the results of the election. Section 82 deals with parties to the petition. Section 83(1)(a) provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies. Section 83(1)(b) states that an election petition shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each of such practice. Section 83(1)(c) provides that where the petitioner alleges any corrupt practice the petition shall be accompanied by an affidavit in the prescribed form (Form-25) which according to rule 94A of the Conduct of Election Rules has to be sworn before a magistrate of the first class or a notary or a commissioner of oaths, in support of the allegation of such corrupt practice and particulars thereof. In the present case, though no issue regarding corrupt practice has been framed, there is an issue of horse-trading. However, in absence of full particulars, which includes the name, date and place of commission of such act, the said issue is not maintainable and cannot be allowed to be agitated by the petitioner. In this connection, he relied on the decision of the Supreme Court. In

Jeet Mohinder Singh-v-Harminder Singh Jassi, JT 1999(8) SC 432, wherein it has been held:—

"... The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves enormous load on the public funds and administration.

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Charge of corrupt practice is quasi-criminal in character. If substantiated, it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career.

A trial of an election petition, though within the realm of civil law, is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice, a mere preponderance of probabilities would not be enough. There would be a presumption of innocence to the person charged. The charge shall have to be proved to hilt, the standard of proof being the same as in a criminal trial.

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Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the appellant relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in the CPC. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94A of the Conduct of Election Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings: (1) which of the statements including

particulars are true to appellant's own knowledge, and (II) which of the statements including the particulars are true to information of the appellant.

x x x x x x x

the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge levelled by him and to prevent any fishing and roving inquiry, also to prevent the returned candidate from being taken by surprise."

It is submitted that the Election Petition does not satisfy any of the requirements as mentioned above. Therefore, the allegation of horse-trading is liable to be dismissed for lack of disclosure of material facts and material particulars and in absence of any affidavit in Form-25. In view of the provisions contained in section 83 of the Act, the witnesses should not have been allowed to depose in relation to the alleged horse-trading and bribery, in other words, corrupt practice, in absence of any pleading in that regard in the Election Petition. For this proposition, reliance has been placed on the decision of the Supreme Court in *Manubhai Nandlal Amersay-v-Popatlal Manilal Joshi*, AIR 1969 SC 734, wherein it has been held that where a corrupt practice is alleged against the returned candidate, the election petition must set forth full particulars of the corrupt practice so as to give the charge a definite character and to enable the Court to understand what the charge is. The charge must be substantially proved as laid, and evidence cannot be allowed to be given in respect of a charge not disclosed in the particulars.

In course of argument, learned counsel for the petitioner submitted that the allegation of horse-trading is not an allegation of corrupt practice but one of fraud perpetrated on the Constitution and the Act. This submission, according to respondent no. 1, is contrary to the evidence of the petitioner (P.W. 6), who in para-9 of his deposition has stated :—

"Though details have not been given, the requirements of section 101-B have been complied with, it is not a fact that I have not mentioned in the election petition about adoption of corrupt practice. Paragraph 14.3 covers the allegations.

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In the election petition and the verification I have not specifically made mention of corrupt practice because my lawyer was of the view that evidence need not be pleaded and the details need not be given as evidence is to be led during trial. In the affidavit, the names of party workers and the MLAs, who gave me information have not been indicated as same is covered by paragraph 14.3 of the election petition. I am aware that corrupt practice is to be specifically pleaded and according to me, paragraph 14.3 of the petition is sufficient compliance of the requirement."

It is submitted that the petitioner cannot be allowed to argue that this amounts to fraud when the peti-

tioner himself admitted in his evidence that the allegation in paragraph-14.3 of the Election Petition constitutes an allegation of corrupt practice. It is also submitted that the petitioner's submission that the allegation of fraud, which vitiates the election of the returned candidate, cannot be accepted since fraud as such is not a ground covered by section 100 of the Act on which the election of the returned candidate can be questioned. It is further submitted that whether or not the allegations made in the Election Petition constitute "corrupt practice", as enumerated under section 123 of the Act, every allegation in the Election Petition requires material facts to be stated. In case corrupt practice is alleged. In addition to material facts, requirements of sections 83(1)(b) and 83(1)(c) to furnish material particulars supported by affidavit in Form-25 are to be satisfied. Therefore, the present Election Petition is liable to be rejected for want of cause of action. It is submitted that material facts are those which constitute cause of action, in other words, the entire bundle of facts, which would constitute a complete cause of action on the basis of which the Court can grant the relief prayed for. In support of this contention, reliance is placed on the decision of the Supreme Court in *Saman N. Balakrishna-v-George Fernandez*, AIR 1969 SC 1201, where it has been held :—

"... The word 'material' shows that facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet..."

Reliance is also placed on a recent decision of the Supreme Court in *V. Narayanaswamy-v-C. P. Thirunavukkarasu*, 2000(1) SCALE 163, wherein it has been observed :—

"... 'Material facts' mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition..."

This view has also been taken in *Uddhab Singh -v- Madhab Rao Scindia*, AIR 1976 SC 744; *Azhar Husain vs. Rajiv Gandhi*, AIR 1986 SC 1253; and many other cases.

This submission has been made as no material fact has been disclosed in the Election Petition regarding horse-trading/corrupt practice/bribery. In view of the admission of the petitioner that there is no mention of respondent no. 1 being indulged in corrupt practice, the Election Petition is liable to be dismissed on that score alone. It is also urged that there are 27 persons who had cross-voted in favour of Congress candidates. In the Orissa Legislative Assembly consisting of 147 members, there were 83 members belonging to the Congress Party, the Biju Janata Dal, of which the petitioner was the candidate, had 27 members as admitted by P.W.5; the Bharatiya Janata Party had 10 members, the other parties had 28 members and there were three vacancies. It is

submitted that the petitioner, who was sponsored by B.J.D., also received 35 votes, which is 8 votes more than the strength of his party, whereas the Congress candidates received 27 extra votes. Thus, it can be inferred that the extra votes were cast by the M.L.As. of the parties which had not sponsored any candidate, and the allegation of horse-trading is a thorough imagination of the petitioner. The petitioner has himself admitted that he was not the sponsored candidate of the entire opposition. Though P.W. 5 has stated in his evidence that B.J.D. had an understanding with B.J.P., there is no evidence on record that B.J.P. had issued any whip on its members to support the candidature of the petitioner or that there was a decision of the B.J.P. to support the B.J.D. candidate, i.e., the election petitioner. That apart, except B.J.D. and B.J.P., there were 28 M.L.As. who were free to support any candidate of their choice. As admitted by P.W.5, every candidate was free to approach and canvass support from the voters, i.e., the Members of the Legislative Assembly. With regard to the submission of the petitioner that respondent no. 1 should have examined all the members who had supported him including J. B. Patnaik as witnesses, it is urged that burden of proof to establish a fact lies on the party who has urged the fact and not on the other side unless the law prescribes a condition on satisfaction of which the burden of proof would shift to the other side. Sections 101 and 105 of the Act make the position amply clear, and no such special law has been placed before this Court. According to the general law, burden of proving the allegation of horse-trading, which is corrupt practice| bribery is always on the petitioner. The burden never shifted to respondent no. 1 and he is not required to disprove the allegation by examining the Members of the Legislative Assembly as his witnesses. It is further submitted that it may be noted that what has been stated by P.Ws.1 to 4 has not been mentioned in the Election Petition. The petitioner (P.W.6) and his election agent (P.W.3) have not uttered a word about the alleged fraud or corrupt practice committed by respondent No. 1 though they have stated that they have heard rumours. P.Ws. 1 to 4 are interested witnesses and their evidence requires corroboration. As observed by the apex Court in *D. Venkata Reddy v. R. Sultan*, (1976) 2 SCC 455, veracity of the evidence of such witnesses has to be carefully scrutinised. It has been held :—

"It has to be borne in mind that the attempt of the agents or supporters of the defeated candidate is always to get the election set aside by means fair or foul and the evidence of such witnesses, therefore, must be regarded as highly interested and tainted evidence which should be acted upon only if the Court is satisfied that the evidence is true and does not suffer from any infirmity."

It is also submitted that even though P. Ws 2 and 3 have stated in their cross-examination that they had disclosed to the petitioner about the offer of attaché-case containing Rs. 10,00,000, there is no reference in the Election Petition to the offer of bribe to these persons. On these submissions, learned counsel for respondent No. 1 states that issue No. 4 regarding horse-trading is required to be answered against the petitioner, and the allegation of fraud is to be re-

jected in view of the admission of the petitioner in his evidence

33. Learned counsel for the petitioner, however, submitted that to do complete justice this issue has to be resolved. In this connection, he relied on the decision of the apex Court in *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 SC 851, wherein it has been held (at p. 886) :—

"The conspectus of provisions bearing on the subject of election clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough power to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other things necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law."

34. I have carefully considered the rival contentions as regards the allegation of horse-trading. Though the allegation of horse-trading has been made in the pleadings, no detail as to the date, place, person, etc. as required by Section 83(1)(b) of the Act has been mentioned, nor any affidavit as required by Section 83(1)(c) of the Act, read with rule 94A of the Conduct of Election Rules has been filed along with the Election Petition. As horse-trading itself will come within the ambit of corrupt practice enumerated under the Act, strict compliance of the statutory requirement is a must. The petitioner having not pleaded the material facts and having not furnished material particulars to support such allegation, and the provisions being mandatory, such a plea cannot stand. Further, the evidence adduced in support of the allegation of horse-trading is by interested witnesses and such evidence cannot be accepted as it travels beyond the pleadings. (See *Quamarul Islam v. S. K. Kanta*, AIR 1994 SC 1733). It is also seen that no complaint has been lodged by the election petitioner or his agent or the witnesses examined by him in this case before the Election Commission or the Returning Officer or the police, and in absence of disclosure of the name, place and other details of the alleged horse-trading in the Election Petition, the evidence of P. Ws. 1 to 4 cannot be accepted as true specially in view of the fact that such witnesses are interested witnesses belonging to the same party as the election petitioner. Their evidence is highly tainted and cannot be accepted, as held by the apex Court in *D. Venkat Reddy (supra)*. In this connection, I would also like to refer to a decision of the Supreme Court in *A. Younus Kunju v. R. S. Unni*, (1984) 3 SCC 347, wherein it has been held that where election is fought on party basis, party workers would necessarily be political supporters of the respective candidates, and on the mere oral testimony of such witnesses, a corrupt practice cannot be said to be established.

35. So far as the submission of the petitioner that to do complete justice this issue should be resolved, the apex Court has used the term "within the parameters set by existing law". The parameter set by the statutory provision, as interpreted by the apex Court, is that full facts and particulars of a corrupt practice have to be stated, and absence of a single fact makes the election petition liable to be dismissed. Therefore, the allegation of horse-trading, which, according to the petitioner, is bribery resorted to by respondent No. 1, cannot be allowed to be agitated in total absence of material facts and particulars in view of section 83(1)(b) of the Act and section 83(1)(c) of the Act read with rule 94A of the Conduct of Election Rules. Therefore, the issue so far as it relates to horse-trading is answered against the petitioner.

36. Now, let me discuss the other limb of the issue, i.e., cross-voting. For this allegation also no material facts and particulars are available. I have narrated in detail in earlier paragraph the strength of different political parties in the Assembly at the relevant point of time. It has been stated by the petitioner in his evidence as P.W. 6 that he was sponsored only by the Biju Janata Dal and not by all the opposition parties combinedly. The allegation of cross-voting has been made on the footing that parties opposed to Congress formed a block, and as the Congress candidates polled 27 more votes than the party strength, which was obviously from this block, there was cross-voting. I am of the opinion that this allegation has no basis in view of the clear admission of the petitioner that he was a candidate sponsored by the Biju Janata Dal alone. That apart, the said party had 27 members in the Assembly whereas the petitioner got 35 votes, i.e., 8 additional votes from the parties other than Congress and Biju Janata Dal. Therefore, he cannot make any complaint if the Congress candidates polled any additional vote. The petitioner submitted that cross-voting could have been proved had the M.L.As. been called as witnesses by the respondents. Allegation of cross-voting having been made by the petitioner, the onus is on him to prove such allegation. This onus has not been discharged by the petitioner so as to call for respondent No. 1 to disprove the same. In this connection, though respondent No. 1 has submitted that the M.L.As. cannot be called as witnesses, the same is not sustainable in view of the decisions of the Supreme Court in *S. Raghbir Singh Gill v. Gurcharan Singh Tohra*, AIR 1980 SC 1362, and *A. Neelalohithadasan Nadar v. George Mascrene*, 1994 AIR SCW 2198. However, as the petitioner has not been able to prove the allegation of cross-voting, Issue No. 4, so far as it relates to cross-voting, is decided against him.

37. The petitioner has urged that apart from horse-trading and cross-voting, fraud was committed on the Constitution and the Act by issuance of whip by the Congress Party. Further, though respondent No. 1 is not a member of the Congress Party, his name was sponsored by the said party and he made a declaration in Form 2C that he is a member of the Congress Party, which is a fraud committed by him.

38. Whip is issued under the Tenth Schedule of the Constitution, para 2(1) of which provides that

subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House if he has voluntarily given up his membership of such political party or if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. Explanation (a) to sub-para (1) of para-2 provides as under :

"For the purposes of this sub-paragraph, an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member."

Under the powers of the Tenth Schedule, the Members of Rajya Sabha (Disqualification on Ground of Defection) Rules have been framed which, inter alia, speak of the whip to be issued by any political party with regard to any proceeding of the House. So, any whip issued in any matter not relating to the proceedings of the House is not a whip. Even if any whip had been issued by the Congress Party to vote in favour of its candidates, the respondents had no role to play in the same. The person issuing the whip was also not the election agent of respondent No. 1. It may not be out of place to mention that as per the evidence of the petitioner as well as P.W. 2, whip had also been issued by the Biju Janata Dal. If issuance of whip amounts to fraud on the Constitution and the Act, both the parties, i.e., Congress and Biju Janata Dal, may be equally held responsible for such fraud. As discussed above, no whip is valid unless it is issued in any matter relating to the proceedings of the House, and Rajya Sabha election is not a matter relating to the proceedings of the House. I have already held that the respondents had no role to play in the matter of issuance of whip by Congress Party. And whip is not effective if issued for Rajya Sabha election, and in case such a whip is issued, it will have no binding force in as much as a person violating the whip cannot be identified in view of the secrecy of votes cast in the said election. For all these reasons, the ground of the alleged fraud committed by the respondents on the Constitution and the Act because of issuance of whip by the Congress Party is not sustainable.

39. The petitioner has alleged that in Form 2C (Ext. H), respondent No. 1 had declared himself to be a member of the Congress Party, but he has admitted in his evidence before the Court that he is not a member, even a primary member, of the said party till the date on which his evidence was recorded. This, according to the petitioner, is a fraud on the Constitution and the Act.

40. Perusal of Ext. H, i.e., Form 2C, shows that respondent No. 1 had only declared that he had been

set up in the election by the Indian National Congress. Nowhere there is any declaration in Ext. H that he is a member of the Congress Party. Therefore, there is no basis for the allegation and it cannot be said that respondent No. 1 perpetrated fraud on the Constitution and the Act. Even if he admitted in his evidence that he is not a member of the Congress Party. In view of the provisions of the Tenth Schedule, he would be considered as a member of the party by which he was set up as a candidate. So far as the argument of the petitioner based on rules 3 and 4 of the Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985 is concerned, rule 3 relates to the information to be furnished by the leader of a legislative party regarding names, etc. of its members. It does not require any individual member to do anything. Rule 4 requires that a Member of Rajya Sabha, before taking his seat, shall submit a certificate in Form III. Thus, the declaration in Form III is to be made after a candidate is given the necessary certificate of his election, in other words, after completion of the election process. Requirement of rule 4 of the aforesaid Rules being an act after the completion of election process cannot be taken as a ground for declaring the election of respondent No. 1 void and it cannot be said that respondent No. 1 perpetrated fraud for getting him elected. Therefore, the allegation on this count is not sustainable. This issue, which was raised as an additional issue of issue No. 4 also fails.

41. The petitioner has also urged that Shri J. B. Patnaik, the then Chief Minister of Orissa, and Ranga Nath Misra, respondent No. 1, sitting in the chambers of the Chief Minister, were issuing chits to the voters, thereby impairing a free and fair election. This, according to the petitioner, is a fraud perpetrated by respondent No. 1, which vitiated the process of election and as such his election is liable to be declared void. It has been further urged that the said chamber of the Chief Minister is within the prohibited area in which canvassing is not permissible. Respondent No. 1 has stoutly denied the allegation of his presence in the Chief Minister's office on the date of poll. He has also given evidence to the effect that he did not meet the Chief Minister until the entire process of counting was over. He has further stated that the office of the Chief Minister, which is in the ground floor of the Assembly, is quite at a distance from the place of polling, i.e. Room No. 54, which is in the first floor of the said building. Respondent No. 3 has also denied the said allegation of the petitioner.

42. The evidence of P.W. 1 shows that he saw respondent No. 1 in the chamber of the Chief Minister on the date of election. The Chief Minister was issuing from his office in the Assembly premises chits to the Congress M.L.As. There is no corroboration to this statement of P.W. 1 by any other witness. P.W. 1 being a party member of the petitioner, his evidence cannot be accepted without independent corroboration. That apart, no complaint was lodged by the petitioner or any of his agents or any voter before the Returning Officer or the Election Commission regarding the alleged presence of respondent No. 1 in the office of the Chief Minister or the distribution of chits by the Chief Minister from his

office, which is alleged to be within the prohibited zone. The Returning Officer (R.W. 2) in cross-examination has stated that no complaint regarding the presence of respondent No. 1 in the office of the Chief Minister during the time of polling was lodged with him. The office of the Chief Minister and the place of polling being in different floors of the building. It cannot be said that the said office is situated within the prohibited zone. Further, the action, if any, of Janaki Ballav Patnaik cannot be taken as a ground for declaring the election of respondents 1 and 3 void as no allegation has been made nor any evidence led that the said Janaki Ballav Patnaik acted as the election agent of these respondents. Therefore, this ground urged by the petitioner alleging commission of fraud by respondent No. 1 also fails.

43. To sum up, I would like to mention that the petitioner alleged horse-trading, cross-voting, issuance of whip, canvassing by respondent No. 1 within the prohibited zone and his admission regarding not being a member of Congress Party as grounds of fraud perpetrated by respondent No. 1 on the Constitution and the Act. I have dealt with all these points keeping in view the submissions of the parties and the ratio laid down in the decisions cited before me. All the points have been decided against the petitioner. Issue No. 4 is answered accordingly.

44. Issue No. 6.—All the issues except Issue No. 1 having been answered against the petitioner, he is not entitled to any relief.

45. In the result, the Election Petition fails and the same is hereby dismissed with cost which is assessed at Rs. 2000 (Rupees two thousand only).

46. Before parting with the case, I must put on record my appreciation for the able assistance rendered by the learned counsel for the parties, specially Mr. Bijan Ray, Senior Advocate and Mr. Gangadhar Rath, Senior Advocate.

Sd/-

Ch. P. K. Misra

Orissa High Court, Cuttack,
August 4, 2000.

[No. 82|CS-OR|1|98|2000]

By Order,

SHARAN PAL SINGH, Secy.

नई दिल्ली, 5 सितम्बर, 2000

आ.अ. 140:— लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग पांडिचेरी सरकार के परामर्श से एतद्-द्वारा श्री हेमचन्द्रन, आई.ए.एस. के स्थान पर श्री बी. विजयन, आई.ए.एस. (ए.जी.एम.यू. 82) को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए पांडिचेरी संघ राज्य क्षेत्र के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री बी. विजयन पांडिचेरी सरकार के अधीन सभी पदों पर या किसी कार्य के पदों पर जो तत्काल सौंप दोगे या धारण करता समाप्त कर दोगे, जा कि वे ऐसा पदभार ग्रहण करने से पहले से धारण कर रहे थे।

3. श्री बी. विजयन मुख्य निर्वाचन अधिकारी, पांडिचेरी के रूप में कार्य करते हुए पांडिचेरी सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा।

[सं. 154/पांडिचेरी/2000-का. प्रशासन]

आदेश में,

ए.एन. झा, निदेशक (प्रशासन) एवम्
प्रधान सचिव

New Delhi, the 5th September, 2000

C.N. 140.—In exercise of the powers conferred by Sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950) the Election Commission of India in consultation with Government of Pondicherry hereby nominates Shri B. Vijayan, IAS (AGMU : 82), as the Chief Electoral Officer for the Union Territory of Pondicherry with effect from the date he takes over charge and until further orders vice Shri S. Hemachandran, IAS.

2. Shri B. Vijayan, IAS shall cease to hold and hand over forthwith the charge of all or any charges of work under the Government of Pondicherry, which he may be holding before such assumption of office.

3. Shri B. Vijayan, IAS while functioning at the Chief Election Officer, Pondicherry shall not hold any additional charge whatsoever under the Government of Pondicherry except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/POND./2000-P. Admn.]

By Order,

A. N. JHA, Director (Admn.)-cum-Principal Secy.

आदेश

नई दिल्ली, 7 सितम्बर, 2000

आ. प्र. 141.—यतः निर्वाचन आयोग का समाधान हो गया है कि उड़ीसा विधान सभा के साधारण निर्वाचन 2000 के लिए जो नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसी सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा नवीन बनाए गए नियमों द्वारा अर्पित उक्त सारणी के स्तम्भ (5) में यथा दणित अपने निर्वाचन व्ययों का लेखा दाखिल करने में अथवा अर्पित रीति में दाखिल करने में असफल रहा है,

और, यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है—

सारणी

क्र.सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4	5
1.	उड़ीसा विधान सभा के लिए साधारण निर्वाचन, 2000	1-करंजिया (अ. ज. जा.)	श्री कैवल्य नायक स्थान-पहादमोवक पो. आ. -बडागाव थाना-करंजिया, रहे। जिला-मयूरभंज, उड़ीसा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल

1	2	3	4	5
2.	उड़ीसा विधान सभा के लिए साधारण निर्वाचन, 2000	2—जशीपुर (अ. ज. जा.)	श्री फागूराम हेमब्रम ग्राम-कल्याणी, पो. आ.-घाला- बानी, थाना-जशीपुर, जिला-मयूरभंज उड़ीसा।	विधि द्वारा अपेक्षित रीति से लेखा दाखिल नहीं किया।
3.	—वही—	4—रंगपुर (अ. ज. जा.)	श्री विश्वनाथ पिंगुआ स्थान-रायपदा, पो. आ.-कठभारिया, थाना-बादामपहाड़, जिला-मयूरभंज, उड़ीसा।	—वही—
4.	—वही—	—वही—	श्री ज्ञानेश्वर टुडु स्थान-संझारण, थाना-अम्बाडिहा, बाया-बीजाताला, जिला-मयूरभंज, उड़ीसा।	—वही—
5.	—वही—	5—वांगडीपोरी (अ. ज. जा.)	श्री वैद्यनाथ महाली स्थान/पो. आ.-सिलफोड़ी, बाया-भारपोरखोरिया, जिला-मयूरभंज, उड़ीसा।	निर्वाचित व्यक्तियों का कोई भी लेखा दाखिल नहीं किया।
6.	—वही—	—वही—	श्री सुरेन्द्र मुरमु स्थान-खाड़ीपहाड़ी, पो. आ.- पोखरिया, जिला-मयूरभंज, उड़ीसा।	—वही—
7.	—वही—	8—त्रैमिना (अ. ज. जा.)	श्री मानसिंहमारान्डी स्थान-फारपुर, पो. आ.-मोखापल, जिला-मयूरभंज, उड़ीसा।	—वही—
8.	—वही—	15—सोरो	श्री निरंजन जेना ग्राम-ओडामाल पो. आ.- गोपालपुर, बाया-बहानागां, जिला-बालासोर, उड़ीसा।	—वही—
9.	—वही—	17—नीलगिरी	श्री सदन सिंह स्थान/पो. आ.-हानखुलिया, थाना-नीलगिरी, जिला-बालासोर, उड़ीसा।	—वही—
10.	—वही—	50—भुवनेश्वर	श्री सौभाग्य चन्द्र नायक मु.-पटिया, पो.-चन्दका, जिला-खुर्दा, उड़ीसा।	—वही—
11.	—वही—	—वही—	श्री विनोद साहू, मु.-रंगानी साही, डेल्टा, बारामुन्डा, पो.-बारामुन्डा, जिला-खुर्दा, उड़ीसा।	—वही—
12.	—वही—	—वही—	श्री सोमनाथ राउतरे 15-बी. डी. ए. मार्केट, काम्प्लेक्स, बा. जे. रो. नगर, भुवनेश्वर, जिला-खुर्दा, उड़ीसा।	—वही—

1	2	3	4	5
13	उड़ीसा विधान सभा के लिए साधारण निर्वाचन, 2000	61—रानपुर	श्री रविनारायण दास, मु. पो.-गोडीपाड़ा, थाना-सारांकुल, जिला-नयागढ़, उड़ीसा।	निर्वाचन व्ययों का कोई भी लेखा दाखिल नहीं किया
14.	—वही—	106—तिलिगाढ़ (अ. जा.)	श्री सन्तोष कुमार नायक मु./पो./थाना-सिन्धेकेला, जिला-बोलंगीर, उड़ीसा।	—वही—

[सं. 76/उड़ीसा-वि. म./2000]

आदेश से,

बी. एन. चावला, सचिव

ORDER

New Delhi, the 7th September, 2000

O.N. 141.—Whereas the Election Commission is satisfied that each contesting candidate specified in column (4) of the Table below at the General Election to the Orissa Legislative Assembly held in 2000 from the Assembly Constituency as specified in column (3) against his/her name has failed to lodge an account of his/her election expenses or in the manner required by the law as shown in column (5) of the said Table as required by the Representation of the People Act, 1951, and the Rules made thereunder:

And whereas, the concerned candidate has either not furnished any reason/explanation for the said

even after due notice and the Election Commission, after considering the representation, if any made by him/her is satisfied that he/she has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the Representation of the People Act, 1951, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

S. No.	Particulars	S. No. & Name of Assembly	Name and address of candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to the Orissa Legislative Assembly, 2000.	1—Karanja (ST)	Sh. Kaibalya Naik, At : Pahadmodak, P.O. : Badagaon, P.S. : Karania, Distt. : Mayurbhanj.	Failed to lodge any account of election expenses.
2.	—do—	2—Jashipur (ST)	Sh. Faguram Hembram, Vill. : Kaliani P.O. : Dhalabani, P.S. : Jashipur, Distt. : Mayurbhanj.	Failed to lodge the account in the manner required by the law.
3.	—do—	4—Rairangpur (ST)	Sh. Biswanath Pingua, At : Raipada, P.O. : Kathbharua, P.S. : Badampahar, Distt. : Mayurbhanj.	—do—
4.	—do—	—do—	Sh. Ganeswar Tudu At : Sanjharan, P.O. : Ambadiha, Via : Bijatala, Distt. : Mayurbhanj.	—do—

1	2	3	4	5
5.	General Election to the Orissa Legislative Assembly, 2000.	5—Bangriposi (ST)	Sh. Baidyanath Mahali, AT/P.O. : Silphodi, Via : Jharpokhoria, Distt. : Mayurbhanj.	Failed to lodge any account of election expenses.
6.	—do—	—do—	Sh. Surendra Murmu, At : Khadipahadi, P.O. : Pokharia, Distt : Mayurbhanj.	—do—
7.	—do—	8—Baisinga (ST)	Sh. Mansingh Marandi, AT : Patpur, P.O. : Gobapal, Distt. Mayurbhanj.	—do—
8.	—do—	15—Soro	Sh. Niranjana Jena, Vill. : Odasal, P.O. : Gopalpur, Via : Bahanaga, Distt. : Balasore.	—do—
9.	—do—	7—Nilgiri	Sh. Sadan Singh, AT/P.O. : Hatikhulia, P.S. : Nilgiri, Distt. : Balasore.	—do—
10.	—do—	50—Bhubaneswar	Sh. Soubhagya Chandra Naik, At : Patia, P.O. : Chandaka, Distt. : Khurda.	—do—
11.	—do—	—do—	Sh. Binod Sahoo, At : Rangani Sahi, Delta : Baramunda, P.O. : Baramunda, Distt. : Khurda.	—do—
12.	—do—	—do—	Sh. Somanath Routray, 15—BDA, Market Complex, BJB Nagar, Bhubaneswar, Distt. : Khurda.	—do—
13.	—do—	61—Ranpur	Sh. Rabinarayan Dash, AT/P.O. : Godipada, P.S. : Sarankul, Distt. : Nayagarh.	—do—
14.	—do—	106—Titilagarh (SC)	Sh. Santosh Kumar Nayak, AT/P.O./P.S. : Sindhekela, Distt. : Bolangir.	—do—

[No. 76/OR-LA/2000]

By Order.

B. N. CHAWLA, Secy.

आदेश

नई दिल्ली, 7 सितम्बर, 2000

आ.अ. 142—यतः निर्वाचन आयोग का समाधान हो गया है कि 1999 में हुए लोक सभा के साधारण निर्वाचन, 1999 के लिए जो नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट विधान सभा निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (3) में उनके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी लोक प्रतिनिधित्व अधिनियम 1951 तथा तद्विनियम बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथा-दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और उनके द्वारा दिए गए अभ्यावेदन पर यदि कोई हो विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों का संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है:—

सारणी

क्रम सं. संसदीय निर्वाचन क्षेत्र का नाम व क्रम सं.	निर्वाचन लड़ने वाले अभ्यर्थी का नाम	निरर्हता का कारण	
1	2	3	4
1.	3-भाद्रक	श्री प्रशान्त सेठी स्था./पो.—गेलपुर थाना—भाद्रक जिला भाद्रक, उड़ीसा ।	कोई भी लेखा दाखिल नहीं किया गया ।
2.	8-पुरी	श्री अग्रधु बेठरा था—गराइलो पो.—बालीपुर जिला—पुरी, उड़ीसा ।	—वही—
3.	18-देवगढ़	श्री अश्वनी कुमार सागर स्था.—वार्ड नं. 9 देवगढ़ टाउन, नीलाबरनीसाही, जिला—झारसुगुडा, उड़ीसा ।	—वही—

[सं. 76/उड़ीसा-लो.स./2000]

आदेश से,

बी.एन. चावला, सचिव

ORDER

New Delhi, the 7th September, 2000

O.N. 142.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (3) of the Table below at the General Election to the House of the People, 1999 held from the constituency specified in column (2) against his name has failed to lodge an account of his election expenses and/or in the manner required by law as shown in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice and the Election Commission, after considering the representation if any, made by him, is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column (3) of the Table below to be disqualified for being chosen as and, for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	No. & Name of Parliamentary Constituency	Name of Contesting candidate	Reason for disqualification
1	2	3	4
1.	3-Bhadrak (SC)	Sh. Prasanta Sethi At/PO : Gelpur PS : Bhadrak (R) Distt. Bhadrak	Failed to lodge any account of election expenses.
2.	8-Puri	Sh. Agadhu Behera At Garailo PO Baliput, Distt. Puri	-do-
3.	18-Deogarh	Sh. Ashwinee Kumar Sagar At Ward No. 9 Deogarh Town Nilabernisahi Distt. Jharsuguda	-do-

[No. 76/OR-HP/2000]

By Order,

B. N. CHAWLA, Secy.

आदेश

नई दिल्ली, 7 सितम्बर, 2000

आ.अ. 143.—निर्वाचन आयोग का समाधान हो गया है कि पांडिचेरी विधान सभा के उप-निर्वाचन के लिए जो नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट निर्वाचन क्षेत्र में हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विनिर्दिष्ट बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथा-दक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है।

और उक्त अभ्यर्थी के सम्यक् सूचना दिए जाने पर भी उन्होंने उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसूचक में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्रम सं.	निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4
1.	4-बस्सी	1. श्री मोहम्मद जकारिया प्लॉट नं. 8, 7 वां क्रॉस अन्नानगर एक्सटेंशन नेल्लीथोपे, पांडिचेरी-5	कोई भी लेखा दाखिल नहीं किया।

1	2	3	4
2	4-बस्सी	2. अरोकीराज 74 देवीदपेट रेलवे लाइन वानरापेट, अट्टपट्टी पांडिचेरी	कोई भी लेखा दाखिल नहीं किया।
		3. श्री केनोडी 122-(ए) थिरुमंगलनगर वेलरामपेट मुदालियरपेट-2 पांडिचेरी	—वही—

[सं. 76/पांडि-वि.म./99 (उप)]

आदेश से,
बाबू राम, सचिव

ORDER

New Delhi, the 7th September, 2000

O.N. 143.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (3) of the Table below at the Bye-election to the Pondicherry Assembly Constituency, 1999 held from the Constituency specified in column (2) against his/her mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failures even after due notice to each of them and the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	No. & Name of Assembly Constituency	Name & Address of the Contesting Candidate	Reason for disqualification
1	2	3	4
1.	4-Bussy	1. Sh. Mohammed Zackaria Plot No. 8, 7th Cross, Anna Nagar Extension, Nellithope, Pondicherry-5.	Accounts not lodged at all.
		2. Sh. Arokiaraj, 74, Daveedpet, Railway line, Vanarapet, Attupatti, Pondicherry.	-do-
		3. Sh. Kennedy, 122 (A) Thirumagal Nagar, Velrampet, Mudaliarpet, Pondicherry.	-do-

[No. 76/POND-LA/99 (Bye)]

By Order,
BABU RAM, Secy.

आदेश

नई दिल्ली, 7 सितम्बर, 2000

आ.अ. 144.—यतः निर्वाचन आयोग का समाधान हो गया है कि लोकसभा के साधारण निर्वाचन 1999 के जो नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है ;

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायी-चित्य नहीं है ,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी भी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हता घोषित करता है ।

सारणी

क्रम सं. संसदीय निर्वाचन-क्षेत्र की क्र. सं. और नाम		निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता		निरर्हता का कारण
1	2	3	4	
1.	1—मद्रास उत्तर	1. श्री डी सम्पत 1247, बी ओ सी नगर, खण्ड नं. 82 टोडिअरपेट		कोई भी लेखा दाखिल नहीं किया ।
		2. श्री के श्रीनिवासन गांधी श्रीनिवासन		—वही—
2.	मद्रास केन्द्रीय	1. श्री आर जानकिअम्मल 668, ब्लॉक-19 केशवापिल्लई पार्क पुलियनथोप, चेन्नई-12		—वही—
		2. श्री बालासामी 22 ए/एफ-2, थिरुवल्लुअर रोड, पेरम्बुर, चेन्नई-1		कोई भी लेखा विधिवत् दाखिल नहीं किया ।
3.	15—रसिपुरम (अ.जा.)	1. डा सी नटेशन 1-47 बी, पेरियाकुलम गांधीपुरम (उत्तर) संदामंगलम नामाक्कल जिला		कोई भी लेखा दाखिल नहीं किया ।
		2. श्री टी एम, सेनगुट्टुवन, 12-ए, न्यू स्ट्रीट नामाक्कल-2		—वही—
		3. श्री एस. सेलवासीरालन 57-सी, शिवागनानमस्ट्रीट गणेशपुरम, नामाक्कल-2		—वही—
		4. श्री रवीन्द्रन 47 बी, वेंकटराव स्ट्रीट मोहानर रोड, नामाक्कल-1		—वही—

1	2	3	4
4. 16-मलेम	1. श्री के. कृष्ण श्री अरयालारी इल्लाम, 85, पेरासातुर मेन रोड, सेलम-7	कोई भी लेखा दाखिल नहीं किया	
	2. श्री पी. चित्थाम्बी 82-बी, मानाराकोलापट्टी सरकारकोलापट्टी पोस्ट मलेम-636030	—वही—	
	3. श्री आर. मणिकम, 47-बी, कट्टुवालाव सेक्कारापट्टी गांव, मट्टुकारानुर पोस्ट ओमालुर तालुक	—वही—	
	4. श्री बी. एल. मरुगन 278, कालारामपट्टी मेन रोड, (आपस्टेचर), किचीपालयम् सेलम-15	—वही—	
	5. श्री एस. के. राजेन्द्रन, 39, सोलामपाल्लम सुरामंगलम, सेलम-636005	—वही—	
5. 20-कोयम्बटूर	1. श्री अर्जुन सम्पत्त 161, वीरा गणेश नगर, कोम्पट्टी कालोनी, कोयम्बटूर-1	—वही—	
6. 23-डिन्डीगुल	1. श्री एस. के. परन्त, मुपुत्र सेनान 113, नाडुपट्टी पेरियाकोट्टई (पोस्ट) डिन्डीगुल तालुक	—वही—	
	2. श्रीमती के. पडियाम्मल, पत्नी करुथा पंडियन, वकीरामंगलम शोलावंडन (वाया) उसीलामपट्टी तालुक	कोई भी लेखा विधिवत् दाखिल नहीं किया।	
7. 30-नागापट्टीनम (अ. जा.)	1. श्री दुरई बालागुरु, मुपुत्र-दुराईसामी अरू-थाथियार स्ट्रीट, इन्जिक्कुडी, पेरालम (पोस्ट) नामिलम	—वही—	

[सं. 76/त. ना.-लो. स./99]

आदेश से,
बाबू राम, सचिव

ORDER

New Delhi, the 7th September, 2000

O.N. 144.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (3) of the Table below at the General Election to the House of the People, 1999 held from the Constituency specified in column (2) against his/her name has failed to lodge an account of his/her election expenses as mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder:

And, whereas, the said candidates have either not furnished any reason or explanation for the said failures even after due notice to each of them and the Election Commission is satisfied that they have no good reason or justification for the said failure:

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	No. & Name of Parliamentary Constituency	Name & Address of the contesting Candidate	Reason for Disqualification
1.	2.	3.	4.
1.	1-Madras North	1. Sh. D. Sampath, 1247, V.O.C. Nagar, Block No. 82, Todiarpet, Chennai-600081.	Accounts not lodged at all.
		2. Sh. K. Sreenivasan Gandhi Sreenivasan, 4, Thiruvalluvar Salai, Kodungaiyur, Chennai-600118.	-do-
2.	2-Madras Central	1. Sh. R. Janakiammal, 668 Block-19, Kesavapillai Park, Pulianthope, Chennai-12.	-do-
		2. Sh. Balasami, 22-A/F2 Siruvallur Road, Perambur, Chennai-1.	Accounts not lodged in the manner.
3.	15-Rasipuram (SC)	1. Dr. C. Natesan, 1-47.B Periyakulam, Gandhipuram (North), Sendamangalam, Namakkal District.	Accounts not lodged at all.
		2. Sh. T. M. Senguttuvan, 12-A, New Street, Ganesapuram, Namakkal-2.	-do-
		3. Sh. S. Selvaseeralan, 57-C, Sivagnanam Street, Ganesapuram, Namakkal-2.	-do-

1	2	3	4
		4. Sh. K. Raveendran, 47-B, Venkatarao Street, Mohanur Road, Namakkal-1.	Accounts not lodged at all.
4. 16-Salem		1. Sh. K. Kannan, Sri Arthanari Illam 85, Peramanur Main Road, Salem-7.	-do-
		2. Sh. P. Chinthambi, 82-B, Majarakollapatti, Sarkarkollapatti Post, Salem-636 030.	-do-
		3. Sh. R. Manickam, 47-B, Kattuvalauv, Sekkarapatti Village, Mattukaranur Post, Omalur Taluk.	-do-
		4. Sh. B.L. Murgan, 278, Kalarampatti Main Road (Upstair), Kitchipalayam, Salem-15.	-do-
		5. Sh. S. K. Rajendran, 39, Solampallam, Suramangalm Salem-636 005.	-do-
5. 20-Coimbatore		1. Sh. Arjun Sampath 161, Veera Ganesh Nagar, Kampatty Colony, Coimbatore-1.	Accounts not lodge at all.
6. 23-Dindigul		1. Sh. S. Kepran, S/o Sennan, 113, Nadupatti, Periyakottai (Post) Dindigul Taluk.	-do-
		2. Smt. K. Pandiammal, W/o Karutha Pandian Vikkiramangalm, Sholavandan(Via) Usilampatti Taluk.	Accounts not lodged in the manner.
7. 30-Nagapattinam (SC)		1. Sh. Durai Balaguru, S/o Duraisamy, Arunthathiyar Street, Injikkudi, Peralam (PO), Nannilam.	-do-

[No. 76/TN-HP 99]

By Order,
BABU RAM, Secy.